# 2020

# CUMULATIVE SUPPLEMENT

TO

# MISSISSIPPI CODE

## 1972 ANNOTATED

**Issued December 2020**

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2020 REGULAR SESSION
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SUPPLEMENTING

# Volume 1

U.S. Constitution
Constitution of the State of Mississippi

**(As Revised 2014)**

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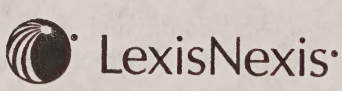


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# User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of your Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
— Advance Sheets
— Amendment Notes
— Analyses
— Code Status
— Comparable Laws from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
— Federal Aspects
— History Notes
— Index
— Joint Legislative Committee Notes
— Judicial Decisions
— Opinions of the Attorney General
— Organization and Numbering System
— Placement of Notes
— Replacement Volumes
— Research and Practice References
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E. Water Street, Charlottesville, VA 22902-5389.

## ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

## ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and

approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, as well as a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

## AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

## ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

## CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

## COMPARABLE LAWS FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

## COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully-annotated softcover volume, which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and are edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

## CROSS REFERENCES

Cross references refer you to notes under other Code sections, which may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Laws from other States* and *Federal Aspects.*

## EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates.*

## EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

## FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Laws from other States.*

## HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, with the most recent information listed last. If a section has been renumbered,

the former number will appear in the history note. References to comparable provisions in statutes also are listed.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

## INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

## JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

## JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

## OPINIONS OF THE ATTORNEY GENERAL

Opinions of the attorney general for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

## ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

## PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article. Look for these unit-wide notes between the title, chapter, or article analysis and the first section in that unit.

## REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable

statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

## RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

## STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

## TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
- Consolidated Tables of amendments and repeals of 1972 Code sections.

# PUBLISHER'S FOREWORD

**Statutes**

The 2020 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2020 Regular Legislative Session.

**Annotations**

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

**Amendment Notes**

Amendment notes detail how the new legislation affects existing sections.

**Editor's Notes**

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

**Joint Legislative Committee Notes**

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

**Tables**

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2020 Regular Session.

**Index**

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

**Acknowledgements**

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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# SCHEDULE OF NEW SECTIONS

Added in this Supplement

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## THE CONSTITUTION OF THE STATE OF MISSISSIPPI

### ARTICLE 3. BILL OF RIGHTS

SEC.

12A. Right to hunt, fish and harvest wildlife.

# THE CONSTITUTION OF THE UNITED STATES OF AMERICA

## ARTICLE I

## THE CONGRESS

### § 4. Congressional Elections; Sessions of Congress

#### JUDICIAL DECISIONS

**1. In general.**

State supreme court's interpretation of state statutes to determine whether an election contest was timely filed did not violate the Elections Clause because the deadline already existed, as it was put in place by the state legislature and continued into newest versions of statutes, and the court was resolving ambiguities in the law instead of creating a deadline. McDaniel v. Cochran, 158 So. 3d 992, 2014 Miss. LEXIS 535 (Miss. 2014).

### § 8. Powers of Congress.

#### JUDICIAL DECISIONS

**2. Burden upon interstate commerce.**

Miss. Code Ann. § 27-7-15(4)(i) violated the dormant commerce clause under the internal consistency test because a taxpayer's dividend income from in-state subsidiaries was excluded from income, while such income from out-of-state subsidiaries was not, as the income had not already borne a tax under the statute, resulting in malapportionment. Miss. Dep't of Revenue v. AT&T Corp., 202 So. 3d 1207, 2016 Miss. LEXIS 448 (Miss. 2016).

## ARTICLE IV

## STATES; RECIPROCAL RELATIONSHIP BETWEEN STATES AND WITH UNITED STATES

### § 1. Full faith and credit

#### JUDICIAL DECISIONS

ANALYSIS

2. Jurisdiction of court.
8. Divorce and support.

**2. Jurisdiction of court.**

Hospital showed that a foreign judgment confirming an arbitration award in favor of a staffing company was invalid on the ground that the arbitrator and the Missouri court lacked personal jurisdiction over it because the contract and lease affirmatively showed that the hospital was not the entity that contracted with the company; the lease established that during the contract period, the county board of supervisors had leased the hospital facility to a private entity and had ceased operating it. Linde Health Care Staffing v. Claiborne County Hosp., 198 So. 3d 318, 2016 Miss. LEXIS 320 (Miss. 2016).

**8. Divorce and support.**

Chancery court did not err in denying a first wife's motion to vacate because it had no authority to vacate a Florida divorce decree issued more than fifteen years before without a complete record and with limited facts; because the first wife initially filed the motion to vacate in the Florida court but voluntarily withdrew it, she could not come to Mississippi and attack the validity of a Florida judgment issued in 1995 without providing a full record. Fernando v. Sapukotana (In re Estate of Sapukotana), 179 So. 3d 1105, 2015 Miss. LEXIS 636 (Miss. 2015).

# AMENDMENTS

## AMENDMENT I

## FREEDOM OF RELIGION, SPEECH AND PRESS; PEACEFUL ASSEMBLAGE; PETITION OF GRIEVANCES

### JUDICIAL DECISIONS

#### ANALYSIS

10. Freedom of religion–In general.
12. Freedom of speech and press–In general.
15. – Advertising, freedom of speech and press.
25. Constitutional vagueness.

**10. Freedom of religion–In general.**

District court correctly granted an injunction barring enforcement of Miss. Const. art. XIV, § 263A and Miss. Code Ann. § 93-1-1(2), because same-sex couples may exercise the fundamental right to marry and there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State. The First Amendment ensures that religious organizations may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. Campaign Southern Equal. v. Bryant, 791 F.3d 625, 2015 U.S. App. LEXIS 11581 (5th Cir. Miss. 2015).

Because a church pastor's request for a temporary restraining order (TRO) presented a purely ecclesiastical controversy, the chancery court was without jurisdiction to hear it. As such, the chancellor erred when he issued the TRO and when he vacated the church's vote to remove the pastor and ordered a new one. Greater Fairview Missionary Baptist Church v. Hollins, 160 So. 3d 223, 2015 Miss. LEXIS 150 (Miss. 2015).

**12. Freedom of speech and press–In general.**

**15. – Advertising, freedom of speech and press.**

Chiropractor did not show statutes requiring the chiropractor to use only certain licensure designations in advertising did not violate the First Amendment because the evidence demonstrated that the chiropractor's advertisements were actually misleading. Barlow v. Miss. State Bd. of Chiropractic Examiners, 233 So. 3d 223, 2017 Miss. LEXIS 209 (Miss. 2017).

**25. Constitutional vagueness.**

Supreme court declined to address defendant's First Amendment vagueness claim because defendant cited no legal authority and provided no argument in support of her assertion that the retaliation statute, Miss. Code Ann. § 97-9-127, infringed upon the First Amendment. Wilcher v. State, 227 So. 3d 890, 2017 Miss. LEXIS 108 (Miss. 2017).

# AMENDMENT III

# SOLDIERS DENIED QUARTER IN HOMES

## JUDICIAL DECISIONS

**24. — Admissibility of evidence, warrantless searches and seizures.**

Anonymous tip, alone, did not possess sufficient indicia of reliability to provide Mississippi Bureau of Narcotic agents with reasonable suspicion to stop a group or its individual members because they were merely acting upon information provided through an anonymous tip; however, the agents personally observed "suspicious" behavior as soon as they arrived on the scene, thereby establishing an independent ground for reasonable suspicion. Cole v. State, 242 So. 3d 31, 2018 Miss. LEXIS 54 (Miss. 2018).

# AMENDMENT IV

# SEARCH AND SEIZURE

## JUDICIAL DECISIONS

### ANALYSIS

3. Standing to challenge search.
22. Search warrant – In general.
24. – Probable cause, search warrant.
26. –Totality of circumstances, search warrant.
28. – Sufficiency of search warrant.
28.5. Invalid warrant, search warrant.
32. Search without warrant – In general.
33. – Consent, search without warrant.
34. – Emergency situations, search without warrant.
36. –Informant, search without warrant.
38. –Fruit of poisonous tree, search without warrant.
40. –Motor vehicles, search without warrant.
44. – "Reasonable suspicion" under "Terry" rule.
45. – Probable cause, search without warrant.
46. –Abandonment of property, search without warrant.
48. Search incident to arrest.
53. Seizure – Temporary detention.
54. - Lawful detention under "Terry" rule, temporary detention.
55. — Stop versus arrest, seizure.
56. Flight; attempt to evade police.

**3. Standing to challenge search.**

Defendant had standing to challenge the search and seizure of his computer files by the police after he had authorized a third party to work on his computer's operating system where the illicit photographs were not obtained as a direct result of the third party's private search but rather under the purported authority of an invalid search warrant. Chesney v. State, 165 So. 3d 498, 2015 Miss. App. LEXIS 277 (Miss. Ct. App. 2015).

**22. Search warrant – In general.**

**24. – Probable cause, search warrant.**

Local ordinance's inspection provisions were unconstitutional due to the lack of a valid warrant provision because, although the ordinance had a warrant procedure, the procedure was constitutionally deficient where it expressly allowed a warrant to issue without probable cause, which meant that the ordinance effectively contained no warrant requirement, and the ordinance unconstitutionally forced landlords to either consent to a warrantless search or forego a rental license. Crook v. City of Madison, 168 So. 3d 930, 2015 Miss. LEXIS 352 (Miss. 2015).

Threshold requirements for probable cause to support the issuance of the original search warrant were not met, and therefore the trial court erred by denying defendant's motion to suppress the evidence obtained as a result of the first and

second search warrants, where the chief admitted that he had only spoken with the confidential informant a couple of times and he had never met, and there was nothing in the affidavit to establish that the information provided by the informant was credible or reliable or that the chief attempted to corroborate the informant's statement through additional independent investigation. Chesney v. State, 165 So. 3d 498, 2015 Miss. App. LEXIS 277 (Miss. Ct. App. 2015).

**26. –Totality of circumstances, search warrant.**

Given that a confidential informant (CI) provided reliable information on the same day that the search warrant was issued and that the CI had given reliable information in the past, the information supporting the search warrants was sufficiently reliable; under a totality-of-the-circumstances review, it was evident that there was a substantial basis for the magistrate's determination that the search warrant's language concerning "stolen items" was supported by sufficiently reliable information. Sutton v. State, 238 So. 3d 1150, 2018 Miss. LEXIS 128 (Miss. 2018).

**28. – Sufficiency of search warrant.**

Search warrant failed adequately to describe the property to be seized because the description of "stolen items" was inadequate to inform the officers executing the search as to which items in a house were to be seized; there was no means to distinguish stolen items from any items that rightfully belonged in the house, and the warrant should have included a more particularized description of at least some of the property to be seized, especially since it was clear from the record it could have. Sutton v. State, 238 So. 3d 1150, 2018 Miss. LEXIS 128 (Miss. 2018).

Search warrant was void and unenforceable on its face because the section of the warrant denoting the location for the search to be executed was completely blank. Moreover, the good faith exception was inapplicable to the facts of the case. State ex rel. Miss. Bureau of Narcotics v. Canada, 164 So. 3d 1003, 2015 Miss. LEXIS 304 (Miss. 2015).

**28.5. Invalid warrant, search warrant.**

Exclusionary rule applied because the evidence seized pursuant to the invalid warrant could not be purged of the primary taint of the illegal search; the warrant was so facially deficient that the executing officers could not have presumed it to be valid since they did not have any way to distinguish stolen items from property that was not stolen. Sutton v. State, 238 So. 3d 1150, 2018 Miss. LEXIS 128 (Miss. 2018).

**32. Search without warrant – In general.**

Officer constitutionally performed a Terry pat-down where the officer was pursuing an armed robbery suspect who was last seen brandishing a pistol, the officer felt an unknown bulge in defendant's pocket, and when he asked defendant what was in it, defendant voluntarily emptied his pockets showing him money Gales v. State, 153 So. 3d 632, 2014 Miss. LEXIS 501 (Miss. 2014).

**33. – Consent, search without warrant.**

Marijuana found in defendant's vehicle during a traffic stop was admissible because defendant consented to the search of the vehicle because when the police officer asked defendant, "Do you mind if I check it real quick before I let you go?" defendant replied, "It don't matter." Martin v. State, 240 So. 3d 1047, 2017 Miss. LEXIS 424 (Miss. 2017), cert. denied, — U.S. —, 138 S. Ct. 2592, 201 L. Ed. 2d 307, 2018 U.S. LEXIS 3234 (U.S. 2018).

**34. – Emergency situations, search without warrant.**

There was no basis to suppress evidence obtained from a second entry into defendant's residence, as the initial search was legal as an emergency search under exigent circumstances, and the second entry into the residence was a reasonable continuation, whereupon evidence seen in plain view was seized. Crawford v. State, 192 So. 3d 905, 2015 Miss. LEXIS 445 (Miss. 2015), cert. denied, — U.S. —, 136 S. Ct. 2527, 195 L. Ed. 2d 855, 2016 U.S. LEXIS 4084 (U.S. 2016).

**36. –Informant, search without warrant.**

Investigatory stop which led to defendant's arrest violated defendant's constitutional right to be free from unreasonable searches and seizures because the stop was based on a tip from an anonymous caller who reported a person driving erratically in a particular vehicle and flashing what appeared to be some type of badge at other drivers, but there was a lack of sufficient indicia of reliability in the case, coupled with the police officers' failure to corroborate the criminal activity reported. Cook v. Rankin County, 2014 Miss. LEXIS 506 (Miss. Oct. 16, 2014).

**38. –Fruit of poisonous tree, search without warrant.**

Circuit court properly convicted defendant of selling more than two, but less than 10, grams of methamphetamine near a church because he forfeited his Fourth Amendment claim where the record neither showed the search was legal or illegal, and the mere failure to file a motion to suppress, in and of itself, could not support defendant's claim his counsel was constitutionally ineffective. Shinstock v. State, 220 So. 3d 967, 2017 Miss. LEXIS 267 (Miss. 2017).

**40. –Motor vehicles, search without warrant.**

Marijuana found in defendant's vehicle was admissible because a police officer observed defendant's vehicle cross the right lane fog line once, and then again approach or "bump" the fog line, and the video evidence from the officer's car camera did not directly contradict the officer's testimony, so that there was sufficient evidence that the officer had probable cause to believe that defendant had driven in a careless or imprudent manner and to stop defendant's vehicle. The officer then searched the vehicle upon smelling the odor of marijuana. Martin v. State, 240 So. 3d 1047, 2017 Miss. LEXIS 424 (Miss. 2017), cert. denied, — U.S. —, 138 S. Ct. 2592, 201 L. Ed. 2d 307, 2018 U.S. LEXIS 3234 (U.S. 2018).

Marijuana found in defendant's vehicle was admissible because a police officer, upon observing defendant's vehicle cross the right lane fog line once and then again approach or "bump" the fog line, had sufficient probable cause to stop defendant for careless driving. Furthermore, the officer had probable cause to search the vehicle as soon as the officer smelled marijuana so that the stop was not unconstitutionally extended. Martin v. State, 240 So. 3d 1047, 2017 Miss. LEXIS 424 (Miss. 2017), cert. denied, — U.S. —, 138 S. Ct. 2592, 201 L. Ed. 2d 307, 2018 U.S. LEXIS 3234 (U.S. 2018).

Marijuana found in defendant's vehicle during traffic stop was admissible because defendant consented to search of vehicle because when police officer asked defendant, "Do you mind if I check it real quick before I let you go?" defendant replied, "It don't matter." Martin v. State, 240 So. 3d 1047, 2017 Miss. LEXIS 424 (Miss. 2017), cert. denied, — U.S. —, 138 S. Ct. 2592, 201 L. Ed. 2d 307, 2018 U.S. LEXIS 3234 (U.S. 2018).

**44. – "Reasonable suspicion" under "Terry" rule.**

Anonymous tip, alone, did not possess sufficient indicia of reliability to provide Mississippi Bureau of Narcotic agents with reasonable suspicion to stop a group or its individual members because they were merely acting upon information provided through an anonymous tip; however, the agents personally observed "suspicious" behavior as soon as they arrived on the scene, thereby establishing an independent ground for reasonable suspicion. Cole v. State, 242 So. 3d 31, 2018 Miss. LEXIS 54 (Miss. 2018).

Investigative stop of defendant's vehicle violated the Fourth Amendment and Miss. Const. art. 3, § 23, where an anonymous caller reported a person driving erratically and flashing what appeared to be some type of badge at other drivers, but the officers took no action to corroborate the reported criminal activity prior to stopping defendant, and thus, the tip lacked the indicia of reliability necessary to justify an investigative stop. Cook v. State, 159 So. 3d 534, 2015 Miss. LEXIS 130 (Miss. 2015).

Officer had reasonable suspicion to stop defendant where defendant was in the immediate vicinity of the crime scene soon

after the robbery, he partially matched the description of one of the robbers, he appeared nervous, and he stopped when he saw the officer. Gales v. State, 153 So. 3d 632, 2014 Miss. LEXIS 501 (Miss. 2014).

**45. – Probable cause, search without warrant.**

Because the pursuit, seizure, and ultimate arrest of defendant were legal, it necessarily followed that the additional marijuana found on his person was lawfully obtained; therefore, it was not fruit of the poisonous tree. Cole v. State, 242 So. 3d 31, 2018 Miss. LEXIS 54 (Miss. 2018).

Officer had probable cause to arrest defendant because he appeared nervous, was wearing light clothing on a cold night, he voluntarily showed the officer wads of money, and he matched dispatch's description of the armed robbery suspect. Gales v. State, 153 So. 3d 632, 2014 Miss. LEXIS 501 (Miss. 2014).

**46. –Abandonment of property, search without warrant.**

Defendant's own acts disclosed the cigarette pack and its contents, so there was no seizure in the sense of the law when the officers examined the contents after it had been abandoned; defendant had not been seized or arrested when he threw the cigarette pack out of his driver's side window, so there was no Fourth Amendment violation. Ray v. State, 238 So. 3d 1118, 2018 Miss. LEXIS 22 (Miss. 2018).

Circuit court did not err in admitting into evidence a firearm and marijuana found in the street because defendant surrendered his Fourth Amendment protections as to those items when he abandoned them; defendant was not considered arrested under the Fourth Amendment until he was captured by the chasing Mississippi Bureau of Narcotic agents and placed into custody because he was in no way restrained during his flight, and thus, no arrest occurred within the confines of the Fourth Amendment. Cole v. State, 242 So. 3d 31, 2018 Miss. LEXIS 54 (Miss. 2018).

Mississippi Bureau of Narcotic agents' decision to conduct a Terry frisk of defendant's person was justified, and thus, defendant's subsequent, unprovoked flight from his lawful, temporary detention provided the agents with further reasonable suspicion to pursue him, and ultimately, the probable cause necessary to effectuate an arrest. Cole v. State, 242 So. 3d 31, 2018 Miss. LEXIS 54 (Miss. 2018).

**48. Search incident to arrest.**

Officer's search of defendant's pockets and money was a proper search incident to arrest where the officer arrested defendant and immediately brought him to the crime scene, the robbery occurred around 10:00 p.m., dispatch notified officers of the crime at 10:02, and the officer stopped defendant at 10:08. Officers were still investigating the robbery, as evidenced by their presence at the scene. Gales v. State, 153 So. 3d 632, 2014 Miss. LEXIS 501 (Miss. 2014).

**53. Seizure – Temporary detention.**

Personal observation by agents of an individual within a group of interest acting suspiciously, plus, upon further investigation, the discovery of marijuana on at least three of the individuals within the group, verified information received in an anonymous tip and justified the temporary detention of the remaining individuals in the group for purposes of investigating possible criminal behavior. Cole v. State, 242 So. 3d 31, 2018 Miss. LEXIS 54 (Miss. 2018).

**54. - Lawful detention under "Terry" rule, temporary detention.**

Scope of investigatory stop was not exceeded by Mississippi Bureau of Narcotic agents' conduct because the agents discovered a firearm, and thus, they were justified in their decision to conduct a Terry frisk of defendant person in order to determine whether he possessed a weapon that could be used to assault the agents. Cole v. State, 242 So. 3d 31, 2018 Miss. LEXIS 54 (Miss. 2018).

Mississippi Bureau of Narcotic agents' decision to conduct a Terry frisk of defendant's person was justified, and thus, defendant's subsequent, unprovoked flight from his lawful, temporary detention provided the agents with further reasonable suspicion to pursue him, and ultimately, the probable cause necessary to effectuate

an arrest. Cole v. State, 242 So. 3d 31, 2018 Miss. LEXIS 54 (Miss. 2018).

Because defendant had been lawfully detained on grounds of reasonable suspicion, his flight provided Mississippi Bureau of Narcotic agents with justification to pursue him; whether defendant had been frisked prior to his flight, he was up to that point lawfully detained under Terry and temporarily not free to leave, but his unprovoked flight was a consummate act of evasion, designed to prevent his further detention and carried out by his desire to avoid jail. Cole v. State, 242 So. 3d 31, 2018 Miss. LEXIS 54 (Miss. 2018).

**55. — Stop versus arrest, seizure.**

Mississippi Bureau of Narcotic agents' investigatory stop was lawful under Terry, both at its inception and in its scope, because the agents were entitled to conduct a carefully limited search of the outer clothing of defendant in an attempt to discover weapons that could be used to assault them; defendant was not under arrest because he was not physically placed under arrest and did not personally submit to any show of authority. Cole v. State, 242 So. 3d 31, 2018 Miss. LEXIS 54 (Miss. 2018).

**56. Flight; attempt to evade police.**

Circuit court did not err in admitting into evidence a firearm and marijuana found in the street because defendant surrendered his Fourth Amendment protections as to those items when he abandoned them; defendant was not considered arrested under the Fourth Amendment until he was captured by the chasing Mississippi Bureau of Narcotic agents and placed into custody because he was in no way restrained during his flight, and thus, no arrest occurred within the confines of the Fourth Amendment. Cole v. State, 242 So. 3d 31, 2018 Miss. LEXIS 54 (Miss. 2018).

Because the pursuit, seizure, and ultimate arrest of defendant were legal, it necessarily followed that the additional marijuana found on his person was lawfully obtained; therefore, it was not fruit of the poisonous tree. Cole v. State, 242 So. 3d 31, 2018 Miss. LEXIS 54 (Miss. 2018).

# AMENDMENT V

# GRAND JURY INDICTMENT FOR CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS OF LAW; JUST COMPENSATION FOR PROPERTY

## JUDICIAL DECISIONS

### ANALYSIS

3. Indictment–In general.
5. Double jeopardy – In general.
13. – Conspiracy, double jeopardy.
15. –Mistrial, double jeopardy.
19. –Reversal of conviction, double jeopardy.
21. Self-incrimination – In general.
24. –Pro se defense of action, self-incrimination.
28. –Request for counsel, self-incrimination.
31. –Comment by counsel on failure to testify, self-incrimination.
35. –Statements regarding post-arrest silence, self-incrimination.
37. – Custodial interrogation, self-incrimination.
38. –Confessions generally, self-incrimination.
44. – Voluntariness of confession, self-incrimination.
51. –Videotapes, self-incrimination.
54. – Psychiatric examination, self-incrimination.

56. – Waiver of rights, self-incrimination.
57. Due process – In general.
78. – Notice and hearing, due process.

**3. Indictment–In general.**

Defendant's purported conviction for robbery was plain error because he had been indicted for burglary, not the entirely distinct crime of robbery, which was not a lesser-included offense of burglary, and a court could not make, alter, or substantively amend a felony indictment; defendant's conviction for robbery was a plain, clear, and obvious error that violated his fundamental rights and constituted a manifest miscarriage of justice. Pace v. State, 242 So. 3d 107, 2018 Miss. LEXIS 199 (Miss. 2018).

Delay of approximately one year between defendant's arrest and the indictment did not result in a violation of due process of law because (1) the pre-indictment delay reasonably could not have been characterized as having caused the destruction of video surveillance tapes, which routinely were destroyed a mere two weeks after they were made, or the inability of a witness to recall the date when the witness had encountered defendant; and (2) obtaining DNA testing was a large part of the reason for the lengthy delay. Roberts v. State, 234 So. 3d 1251, 2017 Miss. LEXIS 383 (Miss. 2017).

Aggravating circumstances used as grounds for defendant's death sentence did not have to be included in the indictment because Apprendi did not require the inclusion of aggravating circumstances in defendant's indictment. Corrothers v. State, 148 So. 3d 278, 2014 Miss. LEXIS 311 (Miss. 2014), cert. denied, 576 U.S. 1023, 135 S. Ct. 2835, 192 L. Ed. 2d 877, 2015 U.S. LEXIS 3926 (U.S. 2015).

**5. Double jeopardy – In general.**

Jury instruction on the "great risk of death" aggravator was proper because the evidence showed that defendant entered a home intending to attack the victim, and in doing so, he shot the victim's parents and held a gun on the victim's brother. Corrothers v. State, 148 So. 3d 278, 2014 Miss. LEXIS 311 (Miss. 2014), cert. denied, 576 U.S. 1023, 135 S. Ct. 2835, 192 L. Ed. 2d 877, 2015 U.S. LEXIS 3926 (U.S. 2015).

**13. – Conspiracy, double jeopardy.**

Defendant's sentences for conspiracy to commit false pretenses and conspiracy to commit timber theft punished him twice for the same illegal agreement, violating the constitutional prohibition against double jeopardy, because here were not two separate conspiracies but rather one conspiracy with two illegal objects, to steal the victim's timber and to obtain money from an unwitting timber company through false pretenses. Terrell v. State, 237 So. 3d 717, 2018 Miss. LEXIS 1 (Miss. 2018).

Issue was never framed for the jury to determine appellant's guilt or lack thereof as to the charge of conspiracy. Appellant's contention that the crime of conspiracy to commit armed robbery was presented to the jury and subsequently dismissed by the jury in his first trial such that double jeopardy and collateral estoppel would attach was unfounded. Newell v. State, 180 So. 3d 701, 2015 Miss. App. LEXIS 236 (Miss. Ct. App. 2015).

**15. –Mistrial, double jeopardy.**

Defendant's second trial did not violate double jeopardy because under the circumstances, which included a witness's unexpected family emergency, the importance of his testimony, and the uncertainty that a continuance would suffice, manifest necessity existed to declare a mistrial; defendant's valued right to have the trial concluded by the first tribunal was subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury. Montgomery v. State, 253 So. 3d 305, 2018 Miss. LEXIS 382 (Miss. 2018).

**19. –Reversal of conviction, double jeopardy.**

Capital murder defendant's multiple trials did not violate the Double Jeopardy Clause. Because defendant had not been acquitted, his convictions had not been upheld on appeal, and he had not received multiple punishments, the Double Jeopardy Clause had not been implicated.

Flowers v. State, 240 So. 3d 1082, 2017 Miss. LEXIS 431 (Miss. 2017), rev'd, — U.S. —, 139 S. Ct. 2228, 204 L. Ed. 2d 638, 2019 U.S. LEXIS 4196 (U.S. 2019).

Defendant's six trials for the four murders did not violate his rights under the Double Jeopardy Clause because he had not been acquitted, his convictions had not been upheld on appeal, and he had not received multiple punishments, as his first,second, and third trials resulted in convictions that were overturned, and in his fourth and fifth trials the jury was unable to reach a unanimous decision. Because his double jeopardy protections had not been violated, defendant could not assert a due process claim on the same grounds. Flowers v. State, 158 So. 3d 1009, 2014 Miss. LEXIS 569 (Miss. 2014), vacated, — U.S. —, 136 S. Ct. 2157, 195 L. Ed. 2d 817, 2016 U.S. LEXIS 3930 (U.S. 2016).

**21. Self-incrimination – In general.**

There was no evidence that defendant was forced against his will by his attorney to testify. Rowsey v. State, 188 So. 3d 486, 2015 Miss. LEXIS 573 (Miss. 2015).

**24. –Pro se defense of action, self-incrimination.**

While it was error to not make a determination on whether a father was entitled to appointed counsel before allowing him to proceed pro se, the error was harmless because he was given a fair and adequate hearing, and the presence of an attorney would not have made a difference; the evidence focused on the father's inability to maintain a relationship with his children while serving a life sentence, and counsel was not necessary to assist him in protecting his right against self-incrimination. Blakeney v. McRee, 188 So. 3d 1154, 2016 Miss. LEXIS 87 (Miss. 2016).

**28. –Request for counsel, self-incrimination.**

Defendant's statement to police officers during an interrogation should have been suppressed because the State of Mississippi failed to adequately prove that defendant initiated a conversation with the police officers after defendant invoked defendant's right to have counsel present, and, even if defendant did initiate the conversation, the State failed to prove beyond reasonable doubt that defendant's statement was knowing and intelligent. Collins v. State, 172 So. 3d 724, 2015 Miss. LEXIS 435 (Miss. 2015).

In connection with the right to counsel during questioning, the standard in providing counsel does not depend on the expediency with which a law enforcement officer may secure counsel for the accused; any subsequent conversation cannot exceed the bounds of clarifying the accused person's request. Downey v. State, 144 So. 3d 146, 2014 Miss. LEXIS 389 (Miss. 2014).

When defendant stated that she had an attorney and "could use him," all interrogation was required to cease except questioning for the purpose of clarifying the request for counsel, but the officer overstepped the limits of proper clarification by emphasizing the amount of time and difficulty that would be involved in obtaining counsel for defendant, and the officer's persistence infringed on defendant's right to cease the interrogation; because defendant invoked her right to counsel and the officer improperly continued questioning her, her rights to an attorney and against self-incrimination were violated. Downey v. State, 144 So. 3d 146, 2014 Miss. LEXIS 389 (Miss. 2014).

**31. –Comment by counsel on failure to testify, self-incrimination.**

Petitioner failed to show cause and actual prejudice necessary to overcome waiver, as there was no direct comment on his failure to testify; the prosecutor commented on petitioner's mitigation evidence and the disparaging remarks he made about the victim, which comments were proper remarks on the weight of the mitigation evidence and did not deprive petitioner of a fair trial. Hutto v. State, 286 So. 3d 653, 2019 Miss. LEXIS 358 (Miss. 2019).

**35. –Statements regarding post-arrest silence, self-incrimination.**

Defendant's right to remain silent was not violated when a police chief testified that defendant declined to interview upon his request because it was not plain, clear,

or obvious that the testimony actually referenced post-Miranda silence; the State did not intentionally elicit the chief's comment, it was the sole reference over the course of defendant's trial regarding his choice to remain silent, and the State did not suggest to the jury that he was guilty because he declined to interview. Swinney v. State, 241 So. 3d 599, 2018 Miss. LEXIS 8 (Miss. 2018).

**37. – Custodial interrogation, self-incrimination.**

Davis v. State (512 U.S. 452, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994)) does not require Mississippi to follow the minimum standard that the federal government has set for itself, and the court is empowered by the state constitution to exceed federal minimum standards of constitutionality and more strictly enforce the right to counsel during custodial interrogations. Downey v. State, 144 So. 3d 146, 2014 Miss. LEXIS 389 (Miss. 2014).

**38. –Confessions generally, self-incrimination.**

By the time defendant arrived to the sheriff 's department, he had enough time to consider whether to invoke his right to remain silent or ask for counsel. Because defendant's confessions were not fruit of the poisonous tree, arising from a warrantless arrest, the trial court did not errin admitting defendant's confessions into evidence. Watts v. State, 223 So. 3d 829, 2017 Miss. App. LEXIS 377 (Miss. Ct. App. 2017).

**44. – Voluntariness of confession, self-incrimination.**

Defendant's confession, which was made during a police interrogation, was freely and voluntarily given, and defendant's rights waiver was knowingly, intelligently, and voluntarily made, because, although defendant declined to sign the rights waiver form, defendant voluntarily informed the interrogating officer of defendant's alibi and responded to further questioning, despite being advised several times that defendant could stop the interview at any point, until defendant confessed to the rape of the victim. Roberts v. State, 234 So. 3d 1251, 2017 Miss. LEXIS 383 (Miss. 2017).

Trial court erred in admitting defendant's confession without first holding a hearing without the jury present where the voluntariness issue had appeared before the trial court, the trial court allowed the State to elicit testimony from the officer who had advised defendant of his Miranda rights and recorded his confession, and by not holding that hearing, the trial court had precluded defendant from putting on evidence refuting the officer's testimony. Williams v. State, 177 So. 3d 836, 2015 Miss. App. LEXIS 200 (Miss. Ct. App. 2015).

**51. –Videotapes, self-incrimination.**

Admission of a redacted video of defendant's second interrogation constituted harmless error beyond a reasonable doubt. All of these statements were cumulative of statements defendant gave in the properly admitted first interrogation that took place 30 minutes prior to the commencement of the second interrogation. Hutto v. State, 227 So. 3d 963, 2017 Miss. LEXIS 180 (Miss. 2017), cert. denied, — U.S. —, 138 S. Ct. 983, 200 L. Ed. 2d 262, 2018 U.S. LEXIS 1361 (U.S. 2018).

**54. – Psychiatric examination, self-incrimination.**

Because the inmate presented mental-health related defenses in both the guilt and sentencing phases of his trial, he waived his right to refuse to participate in an evaluation by the State's experts to develop evidence to rebut the defenses and obviated the need for Estelle warnings. Crawford v. State, 218 So. 3d 1142, 2016 Miss. LEXIS 305 (Miss. 2016).

**56. – Waiver of rights, self-incrimination.**

State did not satisfy its burden of proving beyond a reasonable doubt that defendant had waived her Miranda rights; defendant requested counsel by stating she had an attorney and could use him, but the officer crossed the line in clarifying this, and defendant did not initiate further conversation with the officer, and thus the trial court abused its discretion in denying defendant's motion to suppress. Downey v. State, 144 So. 3d 146, 2014 Miss. LEXIS 389 (Miss. 2014).

**57. Due process – In general.**

To the extent that a police chief's testimony that defendant declined to interview upon his request referenced pre-Miranda silence, the evidence did not constitute plain error because the trial court did not deviate from a legal rule, and the error was not plain, clear, or obvious in light of the split of authority on the issue. Swinney v. State, 241 So. 3d 599, 2018 Miss. LEXIS 8 (Miss. 2018).

**78. – Notice and hearing, due process.**

Public Service Commission deprived ratepayers of procedural due process by failing to require notice to the ratepayers; no notice of the original filing was provided to the ratepayers. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

# AMENDMENT VI

# JURY TRIAL FOR CRIMES AND PROCEDURAL RIGHTS

## JUDICIAL DECISIONS

### ANALYSIS


1. In general.
4. Information of accusation.
15. Instructions curative of error.
17. Sentence and punishment, generally.
18. Speedy trial – In general.
25. – Delay attributable to defendant, speedy trial.
41. – Failure to assert rights, speedy trial.
42. – Right not violated, speedy trial.
50. –Review, speedy trial.
53. Impartial jury – In general.
56.5. Mental competency of juror
61. –Challenges for cause, impartial jury.
67. –Capital cases, impartial jury.
69. –Trial conduct, impartial jury.
71. Confrontation of witnesses – In general.
77. – Informants, confrontation of witnesses.
78. – Hearsay, confrontation of witnesses.
79. – Unavailable witnesses, confrontation of witnesses.
81. –Test results, confrontation of witnesses.
82. – Medical reports, confrontation of witnesses.
85. –Waiver, confrontation of witnesses.
86. Compulsory process.
87. Assistance of counsel – In general.
89. – Pro se representation, assistance of counsel.
95. –Invocation of right, assistance of counsel.
98. –Questioning of defendant after counsel was hired or appointed without counsel present, assistance of counsel.
101. — Substituted counsel, assistance of counsel.
103. — Line up, assistance of counsel.
105. — Mental examination, assistance of counsel.
110. — Conflicts of interest, assistance of counsel.
111. — Ineffective counsel generally, assistance of counsel.
116. — Failure or refusal to present evidence as ineffectiveness of counsel, assistance of counsel.
117. — Inadequate preparation for trial as ineffectiveness of counsel, assistance of counsel.
122. — Failure to object to evidence as ineffectiveness of counsel, assistance of counsel.
122.5. — Failure to object to admission of confession.
123. — Failure to call witnesses as ineffectiveness of counsel, assistance of counsel.
125. — Failure to object to or request instructions as ineffectiveness of counsel, assistance of counsel.
132. — Sufficiency of evidence of ineffectiveness of counsel, assistance of counsel.
133. — Post-conviction proceedings, assistance of counsel.
138. Other particular homicides.
139. — Other particular circumstances.

**1. In general.**

Petitioner was granted leave to proceed in the trial court with his post-conviction relief petition on his claim that his Sixth Amendment right to trial by an impartial jury was violated since one of the jurors was biased; since petitioner's claim was at least "procedurally alive," his allegation of improper juror contact warranted an evidentiary hearing. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

Supreme court cannot ignore the plain language of the Sixth Amendment, which limits its own application to "criminal prosecutions"; to the extent the supreme court held in the case of In Interest of C.B., that the Sixth Amendment applies in civil proceedings, the supreme court overrules it. Miller v. Smith, 229 So. 3d 100, 2017 Miss. LEXIS 427 (Miss. 2017).

In a murder case, even if defendant's constitutional rights were violated, no overwhelming injustice occurred because there was overwhelming evidence presented of his guilt. Offenses to certain constitutional rights did not require a per se reversal. Hall v. State, — So. 3d —, 2016 Miss. LEXIS 125 (Miss. Mar. 17, 2016).

**4. Information of accusation.**

Aggravating circumstances used as grounds for defendant's death sentence did not have to be included in the indictment because Apprendi did not require the inclusion of aggravating circumstances in defendant's indictment. Corrothers v. State, 148 So. 3d 278, 2014 Miss. LEXIS 311 (Miss. 2014), cert. denied, 576 U.S. 1023, 135 S. Ct. 2835, 192 L. Ed. 2d 877, 2015 U.S. LEXIS 3926 (U.S. 2015).

**15. Instructions curative of error.**

Jury was not improperly instructed because a prosecutor did not comment on defendant's failure to testify, so no curative instruction was required. Young v. State, 236 So. 3d 49, 2017 Miss. LEXIS 439 (Miss. 2017).

**17. Sentence and punishment, generally.**

Supreme court declined to find that the admission of an affidavit during defendant's habitual offender hearing was plain error because the Confrontation Clause did not apply to sentencing proceedings, and defendant did not raise the issue on appeal. Conner v. State, 138 So. 3d 143, 2014 Miss. LEXIS 246 (Miss. 2014).

**18. Speedy trial – In general.**

Based on its analysis under the Barker factors on the facts of this case, the appellate court found that defendant was not denied the right to a speedy trial. Springer v. State, 187 So. 3d 1050, 2015 Miss. App. LEXIS 589 (Miss. Ct. App. 2015).

Defendant's right to a speedy trial was not violated because although defendant eventually asserted his right to a speedy trial, he continued to take steps that were inconsistent with his claim that he was ready for trial; defendant waited almost eight months to assert his right, and after asserting his right to a speedy trial, defendant effectively undermined his request by seeking the recusal of the trial judge and filing numerous pretrial motions. Newell v. State, 175 So. 3d 1260, 2015 Miss. LEXIS 505 (Miss. 2015).

**25. – Delay attributable to defendant, speedy trial.**

Defendant's constitutional right to a speedy trial was not violated because, although the delay of approximately five years and two months was presumptively prejudicial, the vast majority of the delay was attributable to continuances generated by the defense; of the approximately five-year delay between defendant's arrest and his trial, 339 days were attributable to the State, and 1,548 days were attributable to defendant; and defendant was not prejudiced by the delay as any anxiety or stress that defendant experienced due to the delay was outweighed by the fact that his defense was assisted, not hindered, by the delay. Perry v. State, 233 So. 3d 750, 2017 Miss. LEXIS 224 (Miss. 2017).

While the 1,099 days between defendant's indictment and trial was presumptively prejudicial, defendant's right to a speedy trial was not violated, as most of the delay resulted from the substantial amount of time it took to schedule and

prepare a mental evaluation for the defense and defendant was not prejudiced by the delay. Rowsey v. State, 188 So. 3d 486, 2015 Miss. LEXIS 573 (Miss. 2015).

**41. – Failure to assert rights, speedy trial.**

There was no violation of defendant's constitutional right to a speedy trial, where defendant never demanded a speedy trial, did not mention the right for almost three years, and when defendant finally did raise the issue, his trial was only four months away. More importantly, defendant failed to articulate any prejudice whatsoever. Collins v. State, 232 So. 3d 739, 2017 Miss. App. LEXIS 297 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 525 (Miss. 2017), cert. denied, 229 So. 3d 123, 2017 Miss. LEXIS 493 (Miss. 2017).

Defendant failed to raise a speedy trial issue at trial, making his claim on direct appeal procedurally barred. Terrell Patrick Corvette Hopper v. State, 220 So. 3d 224, 2017 Miss. App. LEXIS 176 (Miss. Ct. App. 2017), cert. denied, — So. 3d —, 2018 Miss. LEXIS 28 (Miss. 2018), cert. denied, — So. 3d —, 2018 Miss. LEXIS 29 (Miss. 2018), cert. denied, — So. 3d —, 2018 Miss. LEXIS 32 (Miss. 2018).

**42. – Right not violated, speedy trial.**

Defendant's constitutional right to a speedy trial under the Sixth Amendment was not violated, as the State showed good cause for the delay of more than 17 months due to an overcrowded docket, the delay was not deliberate, defendant did not effectively demand a speedy trial but asked for a dismissal based on the failure to provide him a speedy trial, and defendant did not demonstrate any prejudice resulting from the delay. Hurst v. State, 195 So. 3d 736, 2016 Miss. LEXIS 244 (Miss. 2016).

**50. –Review, speedy trial.**

Although there was a 21-year delay for defendant's criminal appeal to be heard, there was no constitutional right to a speedy appeal and the denial of a speedy appeal was not reversible error where there were no other errors of merit. Crawford v. State, 192 So. 3d 905, 2015 Miss. LEXIS 445 (Miss. 2015), cert. denied, — U.S. —, 136 S. Ct. 2527, 195 L. Ed. 2d 855, 2016 U.S. LEXIS 4084 (U.S. 2016).

**53. Impartial jury – In general.**

**56.5. Mental competency of juror**

Petitioner argued that his Sixth Amendment right to an impartial and mentally competent jury was violated, but he failed to demonstrate that a juror was incompetent to serve; the juror was thoroughly questioned and neither the State, defense counsel, nor the trial court noticed any competency issues, and in light of defense counsel's remaining strikes, the decision to accept this juror was trial strategy. Hutto v. State, 286 So. 3d 653, 2019 Miss. LEXIS 358 (Miss. 2019).

**61. –Challenges for cause, impartial jury.**

Defendant's contention that the venire was biased, resulting in an unfair trial, was rejected where nothing in the record showed that jurors in defendant's instant case were aware of the arrests for perjury of two jurors in defendant's prior trial, the potential jurors that defendant challenged for cause were not selected to serve and he did not exercise all of his peremptory challenges, and defendant's suggested remedies of quashing the entire venire or providing a cooling off period until a fair and impartial jury could be empaneled were not viable. Flowers v. State, 158 So. 3d 1009, 2014 Miss. LEXIS 569 (Miss. 2014), vacated, — U.S. —, 136 S. Ct. 2157, 195 L. Ed. 2d 817, 2016 U.S. LEXIS 3930 (U.S. 2016).

**67. –Capital cases, impartial jury.**

Leave was given to file a petition for post-conviction relief because petitioner made a substantial showing of a denial of his constitutional right to an impartial jury to entitle him to a hearing where bailiffs reportedly commented to jurors regarding the reason that all of the jury members were white. The bailiffs reportedly stated that blacks were not comfortable with the death penalty. Batiste v. State, 184 So. 3d 290, 2016 Miss. LEXIS 27 (Miss. 2016).

**69. –Trial conduct, impartial jury.**

Trial court did not abuse its discretion

by denying defendant's motion for a mistrial due to the jury's premature deliberations because it thoroughly questioned each individual juror in chambers to discern the impact of the premature deliberations, and each juror affirmed that he or she had not reached a conclusion on the question of guilt or innocence; the jury bailiff's testimony that he had not overheard the jurors discussing guilt or innocence corroborated the jurors' assertions. Ford v. State, 147 So. 3d 325, 2014 Miss. LEXIS 467 (Miss. 2014).

**71. Confrontation of witnesses – In general.**

Although the trial court should have allowed defendant to cross-examine a witness about mislabeling at the state crime lab, the error was harmless beyond a reasonable doubt. The trial court's failure to allow defense counsel to question the witness about the error in the lab did not prejudice the outcome of the trial. Hutto v. State, 227 So. 3d 963, 2017 Miss. LEXIS 180 (Miss. 2017), cert. denied, — U.S. —, 138 S. Ct. 983, 200 L. Ed. 2d 262, 2018 U.S. LEXIS 1361 (U.S. 2018).

Forensic expert's testimony about projectiles that were removed from police vehicles at the crime scene did not violate defendant's right of confrontation, where the expert clearly participated in the analysis of the evidence recovered. Terrell Patrick Corvette Hopper v. State, 220 So. 3d 224, 2017 Miss. App. LEXIS 176 (Miss. Ct. App. 2017), cert. denied, — So. 3d —, 2018 Miss. LEXIS 28 (Miss. 2018), cert. denied, — So. 3d —, 2018 Miss. LEXIS 29 (Miss. 2018), cert. denied, — So. 3d —, 2018 Miss. LEXIS 32 (Miss. 2018).

Father's removal from the courtroom during the testimony of the mother's daughter from a previous relationship did not violate the Confrontation Clause of the Sixth Amendment because the Confrontation Clause only applies to criminal cases. Miller v. Smith, 229 So. 3d 100, 2017 Miss. LEXIS 427 (Miss. 2017).

Letters the victim's friends and family sent to the trial court regarding defendant's sentence did not violate defendant's right to confrontation because although the supreme court had applied the Confrontation Clause to jury sentencing, the letters were admissible at sentencing because the case involved sentencing by a judge, not a jury, so defendant's right to confrontation was not violated. Burgess v. State, 178 So. 3d 1266, 2015 Miss. LEXIS 570 (Miss. 2015).

**77. – Informants, confrontation of witnesses.**

There was no evidence the informant was an eyewitness to defendant's drug possession, and there were no allegations of entrapment, misidentification, or other similar claims necessitating disclosure; it was not shown how the informant's identity was material to defendant's drug possession, and thus the trial court did not err in not requiring the State to disclose his identity, plus defendant's Sixth Amendment right to confrontation was not violated. Ray v. State, 238 So. 3d 1118, 2018 Miss. LEXIS 22 (Miss. 2018).

**78. – Hearsay, confrontation of witnesses.**

Trial court did not abuse its discretion in allowing a witness's testimony as to what defendant communicated because it properly limited the testimony to statements made by the witness or defendant. Corrothers v. State, 148 So. 3d 278, 2014 Miss. LEXIS 311 (Miss. 2014), cert. denied, 576 U.S. 1023, 135 S. Ct. 2835, 192 L. Ed. 2d 877, 2015 U.S. LEXIS 3926 (U.S. 2015).

**79. – Unavailable witnesses, confrontation of witnesses.**

Defendant's right to a speedy trial was not violated because while defendant arguably suffered slight prejudice due to a witness's unavailability at the second trial, that prejudice did not affect his primary theory of self-defense, which he was able to assert at both trials; defendant offered no evidence as to whether the witness's testimony would have differed at the second trial had he been present. Newell v. State, 175 So. 3d 1260, 2015 Miss. LEXIS 505 (Miss. 2015).

**81. –Test results, confrontation of witnesses.**

Forensic scientist's testimony that a State exhibit contained cocaine did not violate defendant's rights under the Con-

frontation Clause because the forensic scientist was actively involved in the production of the forensic report and had intimate knowledge of the analyses even though she did not perform the tests; the forensic scientist testified as an expert witness in the field of forensic science, with an emphasis in drug analysis, and served as a technical reviewer for the tests performed. Armstead v. State, 196 So. 3d 913, 2016 Miss. LEXIS 321 (Miss. 2016).

In a felony driving under the influence case, defendant's right to confront witnesses under the Sixth Amendment was not violated when his blood-analysis results were authenticated and testified to at trial by a forensic scientist who did not conduct the actual testing of defendant's blood sample, where the scientist stated that he was the technical reviewer on the case and was involved in the production of the report. Ross v. State, 192 So. 3d 1061, 2016 Miss. App. LEXIS 22 (Miss. Ct. App. 2016).

Trial court did not violate defendant's rights under the Confrontation Clause because the reviewing analyst's testimony about the lab report was admissible, even though he did not test the pills, because he had intimate knowledge of the testing and was actively involved in the production of the report. He competently discussed the testing performed on the pills, the results of the analysis, and his role. Hingle v. State, 153 So. 3d 659, 2014 Miss. LEXIS 500 (Miss. 2014), cert. denied, — U.S. —, 135 S. Ct. 2388, 192 L. Ed. 2d 173, 2015 U.S. LEXIS 3610 (U.S. 2015).

**82. – Medical reports, confrontation of witnesses.**

Defendant was properly denied a new trial on his claim that the Confrontation Clause was violated as no attorney was present at the lineup because defendant was about to confront the eyewitness through cross-examination about his statement that he saw defendant shoot the victim. Howell v. State, 163 So. 3d 240, 2014 Miss. LEXIS 496 (Miss. 2014).

**85. –Waiver, confrontation of witnesses.**

Although defendant argued the testimony of a police chief was admitted in violation of the Confrontation Clause, defendant waived the issue by failing to object on the basis that he was denied the right to confront the witnesses who provided statements to the chief. Johnson v. State, 224 So. 3d 549, 2017 Miss. App. LEXIS 104 (Miss. Ct. App. 2017).

**86. Compulsory process.**

Defendant was not denied his constriction right to compulsory service of process because it did not make a witness unavailable; rather, defendant cross-examined the witness, and the circuit court clearly was willing to have the witness returned to court to give additional testimony if necessary. Patton v. State, 109 So. 3d 66, 2012 Miss. LEXIS 612 (Miss. 2012), cert. denied, 571 U.S. 1075, 134 S. Ct. 687, 187 L. Ed. 2d 556, 2013 U.S. LEXIS 8618 (U.S. 2013).

Circuit court did not abuse its discretion in releasing a witness from his subpoena because defendant refused to divulge how the witness's testimony would aid his defense and made no showing that there was a colorable need for his testimony; therefore, defendant was not denied his constriction right to compulsory service of process. Patton v. State, 109 So. 3d 66, 2012 Miss. LEXIS 612 (Miss. 2012), cert. denied, 571 U.S. 1075, 134 S. Ct. 687, 187 L. Ed. 2d 556, 2013 U.S. LEXIS 8618 (U.S. 2013).

**87. Assistance of counsel – In general.**

While trial counsel was deficient for failing to request an accomplice-testimony instruction, as the State used such testimony to identify defendant as the shooter, the deficient performance did not prejudice the defense, as the jury heard testimony from a nonaccomplice witness that defendant admitted his involvement in the robbery and could have deduced from accomplice's testimony that he had an incentive to lie. Carson v. State, 212 So. 3d 22, 2016 Miss. LEXIS 473 (Miss. 2016), cert. denied, — U.S. —, 138 S. Ct. 482, 199 L. Ed. 2d 367, 2017 U.S. LEXIS 7069 (U.S. 2017).

Defendant's trial counsel was not ineffective for failing to renew his motion for a directed verdict at the close of the defense's case-in-chief, as counsel did file a

motion for judgment notwithstanding the verdict or, in the alternative, a new trial, giving the trial court an opportunity to review the sufficiency and weight of the evidence. Brooks v. State, 203 So. 3d 1134, 2016 Miss. LEXIS 472 (Miss. 2016).

**89. – Pro se representation, assistance of counsel.**

Because the record was insufficient to address a Strickland claim, the supreme court denied relief, preserving defendant's right to raise the issue through a post-conviction-relief petition; although defendant alleged that counsel filed subpoenas with an incorrect appearance date, the record did not contain any filed, returned copies of those subpoenas, and it was not apparent why defendant failed to seek a continuance. Lofton v. State, 248 So. 3d 798, 2018 Miss. LEXIS 183 (Miss. 2018), cert. denied, — U.S. —, 139 S. Ct. 1569, 203 L. Ed. 2d 731, 2019 U.S. LEXIS 2762 (U.S. 2019).

**95. –Invocation of right, assistance of counsel.**

Record supported the finding that defendant was advised of his Miranda rights, knowingly and intelligently waived his rights, and freely and voluntarily confessed to setting fire to the house, and his statement that he needed "help" was insufficient to invoke his right to counsel. Franklin v. State, 170 So. 3d 481, 2015 Miss. LEXIS 364 (Miss. 2015).

**98. –Questioning of defendant after counsel was hired or appointed without counsel present, assistance of counsel.**

Defendant's right to a speedy trial was not violated because although the total delay in the case was lengthy, the majority of the delay was justified by good cause or was attributable to defendant's actions; the State's efforts to retry defendant within two months after the reversal of his conviction were more than reasonable, and defendant, not the State requested a continuance to obtain a copy of the transcript from the first trial. Newell v. State, 175 So. 3d 1260, 2015 Miss. LEXIS 505 (Miss. 2015).

**101. — Substituted counsel, assistance of counsel.**

Trial court acted within its discretion in denying defendant's motions for a continuance and a new attorney and the motion to withdraw filed by defendant's attorney because defendant affirmatively stated four days before trial that he would like the attorney to represent him; any conflict that existed was the result of defendant's own actions; the attorney adequately represented defendant as she raised appropriate objections and cross-examined the State's witnesses, and repeatedly attacked the validity of the DNA evidence introduced at trial; and defendant was not deprived of due process or a fair trial based on the overwhelming evidence introduced against him. Hill v. State, 269 So. 3d 1, 2018 Miss. LEXIS 364 (Miss. 2018).

**103. — Line up, assistance of counsel.**

Defendant was properly denied a new trial because he was not entitled to counsel at the lineup, as at the time of the lineup he was under arrest for a parole violation not for capital murder. Defendant's right to counsel for capital murder had not yet attached because the warrant for capital murder had not been issued and proceedings for capital murder charges had not begun. Howell v. State, 163 So. 3d 240, 2014 Miss. LEXIS 496 (Miss. 2014).

Counsel's failure to investigate whether defendant was represented by counsel at the lineup did not amount to ineffective assistance of counsel where counsel moved to have the lineup identification excluded, there was a hearing, testimony at the hearing indicated that counsel was present at the lineup, and the trial judge denied the motion. Howell v. State, 163 So. 3d 240, 2014 Miss. LEXIS 496 (Miss. 2014).

**105. — Mental examination, assistance of counsel.**

Inmate failed to show that trial counsel was constitutionally ineffective for failing to present evidence related to the inmate's mental state, as trial counsel subjected the inmate to extensive testing, two of whom concluded that the inmate was com-

petent and not legally insane that he had malingered his memory deficits Crawford v. State, 218 So. 3d 1142, 2016 Miss. LEXIS 305 (Miss. 2016).

Despite that defendant's competency evaluation was conducted in violation of his constitutional right to counsel due to a conflict between defendant and his counsel, any error was harmless because defendant was not prejudiced by the evaluation and he failed to show that his counsel's personal conflict adversely affected his representation of defendant. Crawford v. State, 192 So. 3d 905, 2015 Miss. LEXIS 445 (Miss. 2015), cert. denied, — U.S. —, 136 S. Ct. 2527, 195 L. Ed. 2d 855, 2016 U.S. LEXIS 4084 (U.S. 2016).

**110. — Conflicts of interest, assistance of counsel.**

Trial counsel was not ineffective per se due to an actual conflict of interest, as there was no actual conflict of interest but only a personality conflict between counsel and his client. Rowsey v. State, 188 So. 3d 486, 2015 Miss. LEXIS 573 (Miss. 2015).

**111. — Ineffective counsel generally, assistance of counsel.**

Although defendant argued he was entitled to new trials because he received constitutionally ineffective assistance of counsel, the appellate court found defendant received effective assistance. Terrell Patrick Corvette Hopper v. State, 220 So. 3d 224, 2017 Miss. App. LEXIS 176 (Miss. Ct. App. 2017), cert. denied, — So. 3d —, 2018 Miss. LEXIS 28 (Miss. 2018), cert. denied, — So. 3d —, 2018 Miss. LEXIS 29 (Miss. 2018), cert. denied, — So. 3d —, 2018 Miss. LEXIS 32 (Miss. 2018).

Circuit court properly convicted defendant of selling more than two, but less than 10, grams of methamphetamine near a church because he forfeited his Fourth Amendment claim where the record neither showed the search was legal or illegal, and the mere failure to file a motion to suppress, in and of itself, could not support defendant's claim his counsel was constitutionally ineffective. Shinstock v. State, 220 So. 3d 967, 2017 Miss. LEXIS 267 (Miss. 2017).

Petitioner could not show that his counsel's failure to object was deficient or that the failure to object prejudiced him because the State's argument fell within the wide latitude allowed during closing argument; the State properly limited its argument to the evidence presented and a reasonable deduction to be drawn from it. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

Petitioner had no claim his counsel was deficient or that he was prejudiced by the instructions given because counsel presented four instructions on weighing mitigation evidence, and the trial court rejected all four. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

Petitioner could not show his counsel was deficient for failing to investigate mitigating circumstances, and he could not show prejudice, because the potential mitigating evidence would barely have altered the sentencing profile presented to the jury; petitioner's poor home environment and family history were presented in detail at the sentencing phase. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

It was clear from the record that defendant's counsel zealously represented defendant. Thus, defendant's ineffective-assistance-of-counsel claim was without merit. Springer v. State, 187 So. 3d 1050, 2015 Miss. App. LEXIS 589 (Miss. Ct. App. 2015).

Regarding defendant's claim that his counsel failed to assert a meritorious double jeopardy claim, the record was not sufficient to address this particular claim on direct appeal. Shinn v. State, 174 So. 3d 961, 2015 Miss. App. LEXIS 479 (Miss. Ct. App. 2015).

Regarding defendant's claim that his counsel was ineffective because counsel failed to object to hearsay testimony from a police detective, defendant failed to meet his burden of proving that counsel was ineffective in a constitutional sense, or that the alleged omissions were so prejudicial as to deprive him of a fair trial. Shinn v. State, 174 So. 3d 961, 2015 Miss. App. LEXIS 479 (Miss. Ct. App. 2015).

Because there was no logical reason to believe that a jury would have convicted defendant of petit larceny but not motor

vehicle theft, defendant's counsel's decision not to request such an instruction was not evidence of incompetence. Shinn v. State, 174 So. 3d 961, 2015 Miss. App. LEXIS 479 (Miss. Ct. App. 2015).

**116. — Failure or refusal to present evidence as ineffectiveness of counsel, assistance of counsel.**

Petitioner could not show that his trial counsel was deficient for failing presenting a mitigation argument or that emphasizing petitioner's experiences in a juvenile training facility or adult prison would have led to a different outcome because his prolonged institutionalization and incarceration was strategic; by not focusing on petitioner's living conditions while in juvenile or adult facilities, counsel kept the State from counter attacking with his criminal history. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

Petitioner could not show that the outcome would have been different if an expert had been presented on executive functioning because the more specific executive-functioning testimony proposed by his new expert would not have significantly differed or added to original expert's testimony; counsel reasonably investigated petitioner's background and the impact it had on his development and behavior. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

**117. — Inadequate preparation for trial as ineffectiveness of counsel, assistance of counsel.**

Waiting until a date close to trial to request discovery is not per se deficient performance of counsel. Therefore, in a statutory rape case, ineffective assistance of counsel was not shown where discovery from the State was received a week before trial; even assuming that trial counsel was deficient, defendant failed to explain how his defense was prejudiced by the timing of his counsel's discovery motion since he was not surprised by any of the evidence. Giles v. State, 187 So. 3d 116, 2016 Miss. LEXIS 122 (Miss. 2016).

In a statutory rape case, ineffective assistance claims based on failure to investigate, failure to reciprocate discovery, and failure to identify and call additional alibi witnesses, and the question of whether defendant was prejudiced by the totality of counsel's performance were not based on facts fully apparent from the record. The arguments could have been made in a petition for postconviction relief. Giles v. State, 187 So. 3d 116, 2016 Miss. LEXIS 122 (Miss. 2016).

In a statutory rape case, counsel was deficient in failing to notify the State about the witnesses he planned to call, but because defendant made no proffer of witness testimony, it was impossible for an appellate court to know, without engaging in wild speculation, whether this omission had any impact on the outcome of the trial. The claim was dismissed without prejudice to the ability to raise it in appropriate post-conviction proceedings. Giles v. State, 187 So. 3d 116, 2016 Miss. LEXIS 122 (Miss. 2016).

**122. — Failure to object to evidence as ineffectiveness of counsel, assistance of counsel.**

Defense counsel was not ineffective for failing to present evidence that defendant and the victim were meeting in an unprofessional manner and failing to object to the State's not introducing the items stolen during the burglary into evidence because no rule of law required the items taken in a burglary to be entered into evidence; the State alleged that defendant broke into the house with the intent to steal, but actually stealing items was not an element of burglary; the items were described particularly through direct testimony by two witnesses who personally saw them in the vehicle defendant was using; and an officer specifically identified his daughter's antique clarinet in the photograph. Moore v. State, 287 So. 3d 189, 2020 Miss. LEXIS 1 (Miss. 2020).

Counsel was not ineffective for failing to contest the evidence the State offered at sentencing to prove defendant's habitual offender status because counsel contested his habitual offender status on grounds that his prior convictions did not constitute crimes of violence; the ineffective assistance claim based on the failure to contest Tony's habitual offender status was moot because the sentences were va-

cated and due to plain error on separate grounds. Swinney v. State, 241 So. 3d 599, 2018 Miss. LEXIS 8 (Miss. 2018).

Trial counsel was not deficient for failing to object or seek a mistrial in response to a police chief's testimony that defendant had declined to be interviewed because the chief's testimony was offered by the State merely to show its effect on how he proceeded with his investigation of the robbery; counsel was not deficient for choosing not to object, and defendant suffered no prejudice as a result, due to other direct evidence of his guilt. Swinney v. State, 241 So. 3d 599, 2018 Miss. LEXIS 8 (Miss. 2018).

In a murder case, even if a statement was hearsay and should have been excluded, it was not probable that the outcome would have been different because of the overwhelming evidence of defendant's guilt. Therefore, ineffective assistance of counsel was not shown. Hall v. State, — So. 3d —, 2016 Miss. LEXIS 125 (Miss. Mar. 17, 2016).

Defendant's ineffective assistance of counsel claim on direct appeal lacked merit where it was based on the admission of the engineer's testimony into evidence, the trial court did not abuse its discretion in admitting that testimony, and thus, the record did not affirmatively show ineffective assistance. Fleming v. State, 179 So. 3d 1160, 2015 Miss. App. LEXIS 201 (Miss. Ct. App.), rev'd, 179 So. 3d 1115, 2015 Miss. LEXIS 611 (Miss. 2015).

**122.5. — Failure to object to admission of confession.**

Defendant did not show that trial counsel rendered ineffective assistance of counsel by failing to object to the admission of his confession and to present an accomplice's testimony because the trial court could have relied on or rejected the accomplice's testimony; because officers testified that neither defendant nor the accomplice had asked for an attorney at any time, their testimony supported the trial court's finding that defendant's rights waiver was knowing, intelligent, and voluntary. Pace v. State, 242 So. 3d 107, 2018 Miss. LEXIS 199 (Miss. 2018).

**123. — Failure to call witnesses as ineffectiveness of counsel, assistance of counsel.**

In a statutory rape case, counsel was not deficient in failing to seek suppression of a statement that defendant made to police based on relevance grounds; even though the statement did not include the name of the person defendant had sexual relations with or the date of the encounter, it was highly probative of his guilt. At the time the statement was made, defendant was being questioned about his encounter with the victim, and his statement was corroborative of the statement the victim made. Giles v. State, 187 So. 3d 116, 2016 Miss. LEXIS 122 (Miss. 2016).

**125. — Failure to object to or request instructions as ineffectiveness of counsel, assistance of counsel.**

Trial counsel was not deficient for choosing not to object to a jury instruction because the instruction was favorable to the defense. Swinney v. State, 241 So. 3d 599, 2018 Miss. LEXIS 8 (Miss. 2018).

Defendant's ineffective assistance of counsel claim based on failure to object to a prima facie evidence instruction failed as defendant could not show a reasonable probability that one instruction altered the result. Wilson v. State, 198 So. 3d 408, 2016 Miss. App. LEXIS 149 (Miss. Ct. App.), cert. denied, 202 So. 3d 616, 2016 Miss. LEXIS 368 (Miss. 2016).

Defendant's ineffective assistance of counsel claim failed where the jury was able to consider witness testimony as to whether defendant was guilty of receiving stolen property, and thus, defendant was not prejudiced by the failure to request an alibi instruction. Wilson v. State, 198 So. 3d 408, 2016 Miss. App. LEXIS 149 (Miss. Ct. App.), cert. denied, 202 So. 3d 616, 2016 Miss. LEXIS 368 (Miss. 2016).

**132. — Sufficiency of evidence of ineffectiveness of counsel, assistance of counsel.**

Defendant's ineffective assistance of counsel claim failed where nothing in the record supported the allegations that his attorney's strategy of asserting self-defense rather than accident was prejudi-

cial, and defense counsel had thoroughly developed the theory that the victim was the aggressor. Byrd v. State, 158 So. 3d 1146, 2015 Miss. LEXIS 129 (Miss. 2015).

**133. — Post-conviction proceedings, assistance of counsel.**

Defendant did not show that trial counsel's failure to file post-trial motions violated his constitutional right to the effective assistance of counsel because no reasonable probability existed that the trial court would have granted his motion for judgment notwithstanding the verdict; defendant confessed to his involvement in the crimes, and the victim's testimony established that, while defendant did not commit the acts himself, he accompanied and encouraged others. Pace v. State, 242 So. 3d 107, 2018 Miss. LEXIS 199 (Miss. 2018).

**138. Other particular homicides.**

Defendant's right to a speedy trial was not violated because although the total delay in the case was lengthy, the majority of the delay was justified by good cause or was attributable to defendant's actions; a witness's unavailability constituted good cause for the final delay in the case because it gave the parties additional time to attempt to locate the witness and allowed defendant time to prepare for trial in his absence. Newell v. State, 175 So. 3d 1260, 2015 Miss. LEXIS 505 (Miss. 2015).

**139. — Other particular circumstances.**

Defendant was not forced to proceed pro se without knowingly or voluntarily waiving his right to an attorney because after being warned of the dangers of self-representation, defendant made it clear that he wished to take the "lead" role in a "co-counsel" arrangement with his court-appointed attorney; defendant was never left to his own defense as a wholly pro se litigant but always had access to counsel. Lofton v. State, 248 So. 3d 798, 2018 Miss. LEXIS 183 (Miss. 2018), cert. denied, — U.S. —, 139 S. Ct. 1569, 203 L. Ed. 2d 731, 2019 U.S. LEXIS 2762 (U.S. 2019).

# AMENDMENT VIII

# EXCESSIVE BAIL, FINES, PUNISHMENTS

## JUDICIAL DECISIONS

### ANALYSIS

10. Intellectual disability.
18. Cruel and unusual punishment – In general.
22. – Disproportionate sentence, cruel and unusual punishment.
24. – Capital punishment, cruel and unusual punishment.
24.5. – Delay in carrying out execution.
33. Competency of person to be executed.

**10. Intellectual disability.**

While Atkins determinations, as to whether one is intellectually disabled and therefore imposing the death penalty would violate the Eighth Amendment, are legal decisions, they are decisions that must be informed by medical experts, and the trial judge abused her discretion by denying the State's motion to evaluate petitioner; the state hospital did not assess in 2006 whether petitioner had an intellectual disability, and instead it was the trial judge, not the expert, who opined that no further assessment was necessary, which was error. State v. Russell, 238 So. 3d 1105, 2017 Miss. LEXIS 454 (Miss. 2017).

Trial court erred by holding that defendant was not intellectually disabled for capital sentencing purposes where it applied an incorrect legal standard by treating defendant's IQ score of between 70 and 75 alone as dispositive of the case and by failing to balance and analyze his adaptive functioning deficits with his IQ score, even though the trial court found that defendant had proved the existence of two adaptive functioning deficits. Carr v. State, 196 So. 3d 926, 2016 Miss. LEXIS 324 (Miss. 2016).

Definitions of intellectual disability promulgated by the American Association on

Intellectual and Developmental Disabilities in 2010 and the American Psychiatric Association in 2013 may be used in Mississippi courts in determining whether a criminal defendant is intellectually disabled for the purposes of the Eighth Amendment. Chase v. State, 171 So. 3d 463, 2015 Miss. LEXIS 194 (Miss. 2015), cert. denied, — U.S. —, 137 S. Ct. 1431, 197 L. Ed. 2d 647, 2017 U.S. LEXIS 2222 (U.S. 2017).

In a capital murder case where defendant was sentenced to death, the circuit court did not clearly err by finding that defendant failed to prove intellectual disability by a preponderance of the evidence because, although defendant met his burden of proof of subaverage intellectual functioning, defendant failed to prove that he had significant deficits in adaptive functioning. Chase v. State, 171 So. 3d 463, 2015 Miss. LEXIS 194 (Miss. 2015), cert. denied, — U.S. —, 137 S. Ct. 1431, 197 L. Ed. 2d 647, 2017 U.S. LEXIS 2222 (U.S. 2017).

**18. Cruel and unusual punishment – In general.**

Defendant's contention that the sentence was disproportionate to the offenses which defendant committed and that it amounted to unconstitutionally cruel and unusual punishment was without merit because the sentences were within the statutory limits, and defendant did not make a serious effort to substantiate a disproportionality claim based on the controlling law. Ferrell v. State, 158 So. 3d 1204, 2015 Miss. App. LEXIS 65 (Miss. Ct. App. 2015).

**22. – Disproportionate sentence, cruel and unusual punishment.**

Because the supreme court had already considered the merits of petitioner's claim that his death sentence was disproportionate when compared to similar cases, petitioner was procedurally barred from raising it again in a motion for post-conviction relief. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

**24. – Capital punishment, cruel and unusual punishment.**

In his post-conviction relief petition, petitioner failed to identify an alternative method of execution that was feasible, readily implemented, and significantly reduced a substantial risk of severe pain; thus, from the face of the petition, he had no Eighth Amendment method-of-execution claim, and his request for leave to proceed in the trial court with a motion for post-conviction relief was denied. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

**24.5. – Delay in carrying out execution.**

Petitioner's claim that the United States Constitution prohibits the State from executing an inmate more than forty years after he was originally sentenced to death lacked merit because he provided no compelling argument to depart from the United States Supreme Court's holdings that rejected similar claims. Jordan v. State, 224 So. 3d 1252, 2017 Miss. LEXIS 245 (Miss. 2017), cert. denied, — U.S. —, 138 S. Ct. 2567, 201 L. Ed. 2d 1104, 2018 U.S. LEXIS 4033 (U.S. 2018).

**33. Competency of person to be executed.**

In a case in which a circuit court judge ruled appellee was intellectually disabled and thus ineligible for the death penalty under the Eighth Amendment, the Supreme Court found no reversible error in admitting an expert's opinion that appellee's multiple consistent IQ scores in the intellectually disabled range ruled out the possibility of malingering. State v. Scott, 233 So. 3d 253, 2017 Miss. LEXIS 222 (Miss. 2017).

# AMENDMENT XI

# SUITS AGAINST STATES

## JUDICIAL DECISIONS

**1. In general.**

Because a hospital was not entitled to sovereign immunity on its probated claim against an estate, the chancellor did not err by denying its sovereign-immunity claim; the chancellor had jurisdiction to adjudicate the probated claim filed by the hospital and contested by the estate because what was before the chancery court was the validity of the hospital's probated claim, not the estate's counterclaim for emotional distress, fraud, and punitive damages. In re Estate of Matute, 293 So. 3d 224, 2020 Miss. LEXIS 43 (Miss. 2020).

# AMENDMENT XIII

# SLAVERY ABOLISHED; ENFORCEMENT

## JUDICIAL DECISIONS

**1. In general.**

Mother's assertions were without merit that by attempting to force her into the foster care system with her newborn, and by threatening to withhold contact with the child, the Department of Human Services subjected her to unconstitutional involuntary servitude in violation Miss. Const. Art. III, § 15 and U.S. Const. Amend. XIII; in every case in which the supreme court found a condition of in voluntary servitude, the victim had no available choice but to work or be subject to legal sanction. In the Interest of C.B.Y., 936 So. 2d 974, 2006 Miss. App. LEXIS 617 (Miss. Ct. App. 2006).

# AMENDMENT XIV

# CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

## JUDICIAL DECISIONS

### ANALYSIS

7. Property interest.
13. Equal protection – In general.
15. – Validity of statutes, equal protection.
16. Due process –In general.
17. – Substantive due process.
18. – Procedural due process.
20.5. Vindictiveness of judge.
81. Zoning.
81.5. - Race-neutral exercise of peremptory challenges, impartial jury
82. Racial discrimination – In general.
86. – Jury selection, racial discrimination.
87. – Race-neutral exercise of per-emptory challenges, impartial jury.
110. Criminal practice and procedure – In general.
124. – Discovery, criminal practice and procedure.
127. – Conduct of trial, criminal practice and procedure.
128. – Judicial conduct, criminal practice and procedure.
138. – Sentence and punishment, criminal practice and procedure.

172. Search and seizure–In general.
185. –Refusal to sign waiver form, self-incrimination.
201. Right to counsel – In general.
204. –Pro se or hybrid representation, right to counsel.
210. –Interrogation continued after counsel has been requested, right to counsel.

**7. Property interest.**

City was not entitled to enforce a zoning ordinance that regulated nonconforming uses to prohibit a mobile-home park operator from replacing individual mobile-homes that were removed from the mobile-home park because the city's interpretation of the ordinance, after more than thirty years of not enforcing the ordinance in that manner, was both arbitrary and capricious and violated the mobile-home park operator's constitutional right to enjoy its property. Cleveland MHC, LLC v. City of Richland, 163 So. 3d 284, 2015 Miss. LEXIS 230 (Miss. 2015).

**13. Equal protection – In general.**

Mississippi Constitution provision providing that rights of way were not permissible in incorporated cities and towns was not unconstitutional under the Equal Protection Clause of the United States Constitution because there was a rational basis for this provision; unincorporated areas had few public roads, incorporated towns and cities had ordinances that required properties to abut these public roads, and cities or towns had the prerogative to mandate the minimum-access requirements necessary to protect the welfare of its citizens. Moreover, there were other remedies available. High v. Kuhn, 191 So. 3d 113, 2016 Miss. LEXIS 121 (Miss. 2016).

**15. – Validity of statutes, equal protection.**

District court correctly granted an injunction barring enforcement of Miss. Const. art. XIV, § 263A and Miss. Code Ann. § 93-1-1(2), because there was no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State. The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. Campaign Southern Equal. v. Bryant, 791 F.3d 625, 2015 U.S. App. LEXIS 11581 (5th Cir. Miss. 2015).

Licensing requirement, Miss. Code Ann. § 83-39-3(2), violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution where the State failed to articulate any rationale basis for precluding all felons, regardless of the nature or age of the felony, from holding bail-agent licenses. Chunn v. State ex rel. Miss. Dep't of Ins., 156 So. 3d 884, 2015 Miss. LEXIS 36 (Miss. 2015).

**16. Due process –In general.**

**17. – Substantive due process.**

In a capital murder case, defendant's due process claim was an attempt to supplement the protections of the Double Jeopardy Clause. Because the double jeopardy protections had not been violated, defendant could not assert a due process claim on the same grounds. Flowers v. State, 240 So. 3d 1082, 2017 Miss. LEXIS 431 (Miss. 2017), rev'd, — U.S. —, 139 S. Ct. 2228, 204 L. Ed. 2d 638, 2019 U.S. LEXIS 4196 (U.S. 2019).

**18. – Procedural due process.**

Dismissing a school superintendent's Fourteenth Amendment due process claim contesting termination due to a failure to appeal pursuant to Miss. Code Ann. § 37-9-113 erred because (1) the superintendent sufficiently alleged denial of a property interest in employment without a constitutionally required pre-termination hearing, and (2) any appeal would have only provided a constitutionally inadequate post-termination hearing. Greene v. Greenwood Pub. Sch. Dist., 890 F.3d 240, 2018 U.S. App. LEXIS 12510 (5th Cir. Miss. 2018).

In a capital murder case, defendant's due process claim was an attempt to supplement the protections of the Double Jeopardy Clause. Because the double jeopardy protections had not been violated,

defendant could not assert a due process claim on the same grounds. Flowers v. State, 240 So. 3d 1082, 2017 Miss. LEXIS 431 (Miss. 2017), rev'd, — U.S. —, 139 S. Ct. 2228, 204 L. Ed. 2d 638, 2019 U.S. LEXIS 4196 (U.S. 2019).

Chancellor did not abuse his discretion in refusing to set aside a default judgment entered against the majority shareholders as a result of their discovery misconduct where they had been given notice and an opportunity to be heard on the minority shareholder's motion to strike their answer, the decision was based on a finding that the majority shareholders had willfully refused to participate in the pending litigation, and thus, due process had been satisfied. Crossley v. Moore, 182 So. 3d 462, 2015 Miss. App. LEXIS 213 (Miss. Ct. App. 2015), cert. denied, 181 So. 3d 1010, 2016 Miss. LEXIS 22 (Miss. 2016).

By approving increased rates based on "mirror construction work in progress" recovery, the Public Service Commission deprived the ratepayers of their money, and the increased rates were not being used to pay for funds during construction as provided by the Base Load Act but were confiscated through governmental decree by rate increase imposed by a privately owned corporation that could not spend it; the taking of private funds is a transfer of property and results in the deprivation of property. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

**20.5. Vindictiveness of judge.**

Defendant's sentences were not the result of vindictiveness because the judge who sentenced defendant after his trial did not sentence him after his guilty plea, and thus, he had no personal stake in the prior conviction and no motivation to engage in self-vindication; having heard the circumstances of the crime through the evidence presented at trial, the judge was entitled to impose a harsher sentence than a judge who merely accepted defendant's initial guilty plea. McCoy v. State, 147 So. 3d 333, 2014 Miss. LEXIS 470 (Miss. 2014).

**81. Zoning.**

City was not entitled to enforce a zoning ordinance that regulated nonconforming uses to prohibit a mobile-home park operator from replacing individual mobile-homes that were removed from the mobile-home park because the city's interpretation of the ordinance, after more than thirty years of not enforcing the ordinance in that manner, was both arbitrary and capricious and violated the mobile-home park operator's constitutional right to enjoy its property. Cleveland MHC, LLC v. City of Richland, 163 So. 3d 284, 2015 Miss. LEXIS 230 (Miss. 2015).

**81.5 - Race-neutral exercise of peremptory challenges, impartial jury**

In a capital murder case, the trial court did not err in denying defendant's Batson challenges; the evidence indicated that the State's reasons for its peremptory strikes were valid and not merely pretextual. Flowers v. State, 240 So. 3d 1082, 2017 Miss. LEXIS 431 (Miss. 2017), rev'd, — U.S. —, 139 S. Ct. 2228, 204 L. Ed. 2d 638, 2019 U.S. LEXIS 4196 (U.S. 2019).

**82. Racial discrimination – In general.**

Defendant failed to show that the death-penalty scheme discriminated in violation of the Fourteenth Amendment because he simply pointed to statistical evidence as evidence of discrimination and failed to demonstrate that the decision-makers in his case acted with a discriminatory purpose. Corrothers v. State, 148 So. 3d 278, 2014 Miss. LEXIS 311 (Miss. 2014), cert. denied, 576 U.S. 1023, 135 S. Ct. 2835, 192 L. Ed. 2d 877, 2015 U.S. LEXIS 3926 (U.S. 2015).

**86. – Jury selection, racial discrimination.**

Defendant's Batson challenges were without merit, even though the State did ask more questions of potential African-American jurors than white jurors, because disparate questioning alone was not dispositive of purposeful discrimination. The State's contention that the additional questions were asked to clarify and follow up on certain issues was supported by the record. Flowers v. State, 158 So. 3d 1009, 2014 Miss. LEXIS 569 (Miss. 2014), va-

cated, — U.S. —, 136 S. Ct. 2157, 195 L. Ed. 2d 817, 2016 U.S. LEXIS 3930 (U.S. 2016).

**87. – Race-neutral exercise of peremptory challenges, impartial jury.**

In a capital murder case, the trial court did not err in denying defendant's Batson challenges; the evidence indicated that the State's reasons for its peremptory strikes were valid and not merely pretextual. Flowers v. State, 240 So. 3d 1082, 2017 Miss. LEXIS 431 (Miss. 2017), rev'd, — U.S. —, 139 S. Ct. 2228, 204 L. Ed. 2d 638, 2019 U.S. LEXIS 4196 (U.S. 2019).

Defendant's Batson challenges were without merit where the State provided multiple race-neutral reasons for the peremptory strikes against each of the five African-Americans, including their knowledge of defense witnesses, knowledge of defendant's family, views on the death penalty, and hesitation about serving as a juror. The evidence indicated that the race-neutral reasons were valid and not merely pretextual. Flowers v. State, 158 So. 3d 1009, 2014 Miss. LEXIS 569 (Miss. 2014), vacated, — U.S. —, 136 S. Ct. 2157, 195 L. Ed. 2d 817, 2016 U.S. LEXIS 3930 (U.S. 2016).

Trial court's denial of defendant's Batson challenge was not clearly erroneous because the reasons offered by the State were race-neutral and supported by the record; the State's use of the two peremptory strikes in question did not evince such a clear pattern of discrimination that its proffered explanations for the strikes were mere pretext. McCoy v. State, 147 So. 3d 333, 2014 Miss. LEXIS 470 (Miss. 2014).

**110. Criminal practice and procedure – In general.**

**124. – Discovery, criminal practice and procedure.**

Although defendant argued that the State violated his due process rights by failing to test his wife's firearm, a test fire would not have revealed that a bullet was jammed in the chamber because the bullet had been removed by defendant's wife; therefore, defendant was not deprived of presenting a complete defense. Edwards v. State, 162 So. 3d 864, 2014 Miss. App. LEXIS 711 (Miss. Ct. App. 2014).

**127. – Conduct of trial, criminal practice and procedure.**

Defendant was entitled to a new trial because counsel provided ineffective assistance by failing to so move as (1) there was no strategic reason for failing to so move, and (2) it was reasonably probable the motion would have been granted, since defendant had a right to be where defendant was, the victim was an immediate aggressor by forcibly entering a dwelling, and defendant engaged in no unlawful activity, so defendant had no duty to retreat. Woods v. State, 242 So. 3d 47, 2018 Miss. LEXIS 85 (Miss. 2018).

Defendant was properly denied a new trial based on the State's alleged misrepresentations about counsel being present at the lineup because it was not a use of false evidence in violation of the 14th Amendment, as the police chief testified that he could have been mistaken but he did not lie when he said that counsel was present at the lineup. Howell v. State, 163 So. 3d 240, 2014 Miss. LEXIS 496 (Miss. 2014).

**128. – Judicial conduct, criminal practice and procedure.**

Trial judge's verdict of guilt was reversed where his investigation into the contemptuous allegations, his interrogation of an investigator, and his personal knowledge and involvement gave him substantial personal involvement in the prosecution and would have led a reasonable person to have reasonable doubt about the judge's impartiality. Terrell v. State, 166 So. 3d 549, 2015 Miss. App. LEXIS 301 (Miss. Ct. App. 2015).

**138. – Sentence and punishment, criminal practice and procedure.**

Prisoners awaiting execution in Mississippi were not entitled to an injunction preventing the State from conducting executions with compounded pentobarbital because Mississippi's sovereign immunity prevented a federal court from enjoining state officials to follow state law, Missis-

sippi state law empowered prisoners to challenge their sentence, and the prisoners did not show they were likely to succeed in establishing a violation of either their procedural or substantive due process rights. Jordan v. Fisher, 823 F.3d 805, 2016 U.S. App. LEXIS 11734 (5th Cir. Miss. 2016), cert. denied, — U.S. —, 137 S. Ct. 1069, 197 L. Ed. 2d 188, 2017 U.S. LEXIS 1405 (U.S. 2017).

**172. Search and seizure–In general.**

**185. –Refusal to sign waiver form, self-incrimination.**

Defendant's confession, which was made during a police interrogation, was freely and voluntarily given, and defendant's rights waiver was knowingly, intelligently, and voluntarily made, because, although defendant declined to sign the rights waiver form, defendant voluntarily informed the interrogating officer of defendant's alibi and responded to further questioning, despite being advised several times that defendant could stop the interview at any point, until defendant confessed to the rape of the victim. Roberts v. State, 234 So. 3d 1251, 2017 Miss. LEXIS 383 (Miss. 2017).

**201. Right to counsel – In general.**

**204. –Pro se or hybrid representation, right to counsel.**

While it was error to not make a determination on whether a father was entitled to appointed counsel before allowing him to proceed pro se, the error was harmless because he was given a fair and adequate hearing, and the presence of an attorney would not have made a difference; the father received adequate notice of the pending adoption proceeding and was present and actively involved at all stages of the proceedings. Blakeney v. McRee, 188 So. 3d 1154, 2016 Miss. LEXIS 87 (Miss. 2016).

**210. –Interrogation continued after counsel has been requested, right to counsel.**

Defendant's statement to police officers during an interrogation should have been suppressed because the State of Mississippi failed to adequately prove that defendant initiated a conversation with the police officers after defendant invoked defendant's right to have counsel present, and, even if defendant did initiate the conversation, the State failed to prove beyond reasonable doubt that defendant's statement was knowing and intelligent. Collins v. State, 172 So. 3d 724, 2015 Miss. LEXIS 435 (Miss. 2015).

# AMENDMENT XVII

# POPULAR ELECTION OF SENATORS

## JUDICIAL DECISIONS

### ANALYSIS

1. Construction and application.
2. Writ of election.

**1. Construction and application.**

Miss. Code Ann. § 23-15-855 is silent regarding the situation in which a senatorial vacancy occurs after a general state or congressional election, and the statute fails to implement the specific power granted to the legislature by the Seventeenth Amendment for directing the filling of the vacancy by election. As such, the general power granted to the executive branch of the state by the Seventeenth Amendment to issue writs of election is controlling. Barbour v. State ex rel. Hood, 974 So. 2d 232, 2008 Miss. LEXIS 87 (Miss. 2008).

**2. Writ of election.**

Writ of election issued by the Governor on December 20, 2007, designating November 4, 2008, as the general election day for electing a U.S. Senator to complete the term of office of a Senator who had resigned was not constitutionally infirm.

The circuit court erred, as a matter of law, in finding that the writ of election exceeded the Governor's constitutional and statutory authority. Barbour v. State ex rel. Hood, 974 So. 2d 232, 2008 Miss. LEXIS 87 (Miss. 2008).

3. Bill of Rights.

**ADOPTED NOVEMBER 1, A.D., 1890**

# ARTICLE 1.

# DISTRIBUTION OF POWERS.

## JUDICIAL DECISIONS

### ANALYSIS

8. Judicial powers and functions–In general.
13. – – Municipal ordinances, judicial powers and functions.
15. Executive powers and functions.
16. Encroachment–In general.
17. – – Upon legislative power, encroachment.

**8. Judicial powers and functions–In general.**

**13. – – Municipal ordinances, judicial powers and functions.**

Local board is in the best position to interpret its own local ordinances; thus, by giving great weight to the board's interpretation, the supreme court ensures it sticks to its constitutional role as the judiciary, and the supreme court restrains its branch from becoming a super-municipal board, a role that would certainly usurp the powers of the local governing body. Hatfield v. Bd. of Supervisors of Madison Cty., 235 So. 3d 18, 2017 Miss. LEXIS 315 (Miss. 2017).

Mississippi's law does not run afoul of the constitution; the board of supervisors is not overstepping its bounds into the judiciary's role by interpreting local ordinances but is simply acting within its own established role as creator and enforcer of local law, and similarly, by giving deference to a local board's interpretation, the supreme court is not ceding its judicial power. Hatfield v. Bd. of Supervisors of Madison Cty., 235 So. 3d 18, 2017 Miss. LEXIS 315 (Miss. 2017).

**15. Executive powers and functions.**

Statute which allowed the Executive Branch to make appropriations decisions was constitutional, as it did not violate the doctrine of separation of powers, because budget reductions imposed on state agencies by the Governor of the State of Mississippi pursuant to the statute were an exercise of the Executive's constitutional power to control the budget. Clark v. Bryant, 253 So. 3d 297, 2018 Miss. LEXIS 385 (Miss. 2018).

**16. Encroachment–In general.**

**17. – – Upon legislative power, encroachment.**

Senate possesses power to make rules regarding the exercise of legislative powers that inhere in it, and it may confer these powers upon one or more of its members, one of which is Lieutenant Governor by virtue of § 129 of Constitution; therefore, separation of powers doctrine is not violated by Lieutenant Governor's exercising power in Senate pursuant to Senate rules. Dye v. State, 507 So. 2d 332, 1987 Miss. LEXIS 2507 (Miss. 1987).

## JUDICIAL DECISIONS

### ANALYSIS

1. Encroachment of power – In general.
2. – – Legislative branch, encroachment of power.
3. – – Executive branch, encroachment of power.
4. – – Judicial branch, encroachment of power.
6. Judicial review of administrative decisions.

**1. Encroachment of power – In general.**

Senate possesses power to make rules regarding the exercise of legislative powers that inhere in it, and it may confer these powers upon one or more of its members, one of which is Lieutenant Governor by virtue of § 129 of Constitution; therefore, separation of powers doctrine is not violated by Lieutenant Governor's exercising power in Senate pursuant to Senate rules. Dye v. State, 507 So. 2d 332, 1987 Miss. LEXIS 2507 (Miss. 1987).

**2. – – Legislative branch, encroachment of power.**

Court of Appeals erred in affirming the denial of defendant's petition for post-conviction relief because the circuit court lacked jurisdiction and authority to accept his guilty pleas when he never had been charged with a crime, the Legislature did not have power to limit the number of claims that could be plead in a particular pleading, the docket sheet reflected that no criminal information, even assuming one ever existed, was filed with the circuit court, and the criminal files did not include any charging document. Ashwell v. State, 226 So. 3d 69, 2017 Miss. LEXIS 341 (Miss. 2017).

**3. – – Executive branch, encroachment of power.**

Sheriff, rather than a circuit court, was to make hiring, firing, and compensation changes affecting bailiffs, as bailiffs were deputies of the sheriff. A circuit court order and order and opinion stating that bailiffs fell under the authority of the judiciary rather than the sheriff were void in part to the extent that they directly violated the Mississippi Constitution and statutory law. Lewis v. Hinds County Circuit Court, 158 So. 3d 1117, 2015 Miss. LEXIS 102 (Miss. 2015).

Statute which allowed the Executive Branch to make appropriations decisions was constitutional, as it did not violate the doctrine of separation of powers, because budget reductions imposed on state agencies by the Governor of the State of Mississippi pursuant to the statute were an exercise of the Executive's constitutional power to control the budget. Clark v. Bryant, 253 So. 3d 297, 2018 Miss. LEXIS 385 (Miss. 2018).

**4. – – Judicial branch, encroachment of power.**

The time frame for viewing ballots after an election is a legislative function, and the Supreme Court of Mississippi has no authority to modify the statutory limitation. Simply put, a substantive right is created by statute to view the ballot-box contents for a limited time after an election is conducted, and this right does not restrict any party's discovery rights under the Mississippi Rules of Civil Procedure. Smith v. Webster, 233 So. 3d 242, 2017 Miss. LEXIS 207 (Miss. 2017).

To the extent Tuck v. Blackmon, 798 So. 2d 402 (Miss. 2001) held that the judiciary possesses some power to interfere in the Legislature's internal procedure, it is overruled; at least to the extent that the political question doctrine turns on a textually demonstrable constitutional commitment of the issue to a coordinate branch political department it cannot be considered a matter of discretion given the Mississippi Constitution's absolute separation of powers. Gunn v. Hughes, 210 So. 3d 969, 2017 Miss. LEXIS 54 (Miss. 2017).

Petition of a member of the Legislature raised an issue the judiciary lacked authority to adjudicate because the constitutional authority, and duty, to decide whether the speaker of the house violated the constitutional provision requiring bills to be read upon a member's request was squarely within the power of the

legislative branch; by requesting the courts to force the speaker to read bills in a particular manner, the member sought to involve the judiciary in legislative procedural matters. Gunn v. Hughes, 210 So. 3d 969, 2017 Miss. LEXIS 54 (Miss. 2017).

**6. Judicial review of administrative decisions.**

Local board is in the best position to interpret its own local ordinances; thus, by giving great weight to the board's interpretation, the supreme court ensures it sticks to its constitutional role as the judiciary, and the supreme court restrains its branch from becoming a super-municipal board, a role that would certainly usurp the powers of the local governing body. Hatfield v. Bd. of Supervisors of Madison Cty., 235 So. 3d 18, 2017 Miss. LEXIS 315 (Miss. 2017).

Mississippi's law does not run afoul of the constitution; the board of supervisors is not overstepping its bounds into the judiciary's role by interpreting local ordinances but is simply acting within its own established role as creator and enforcer of local law, and similarly, by giving deference to a local board's interpretation, the supreme court is not ceding its judicial power. Hatfield v. Bd. of Supervisors of Madison Cty., 235 So. 3d 18, 2017 Miss. LEXIS 315 (Miss. 2017).

# ARTICLE 3.

# BILL OF RIGHTS.

Sec.
12A. Right to hunt, fish and harvest wildlife.

## § 12. Right to bear arms.

### JUDICIAL DECISIONS

**1. Carrying concealed weapons.**

Miss. Const. art. 3, § 12, Miss. Code Ann. § 97-37-1(2), and Miss. Code Ann. § 45-9-55 establish the express legislative action and the State law prohibitions, and an employee may be discharged at the employer's will for good reason, bad reason, or no reason at all, excepting reasons independently declared legally impermissible; an employee is wrongfully discharged if terminated for an act specifically allowed by State law, the prohibition of which is specifically disallowed by statutory law. Swindol v. Aurora Flight Scis. Corp., 194 So. 3d 847, 2016 Miss. LEXIS 131 (Miss. 2016).

### RESEARCH REFERENCES

**ALR.**

Validity of State Gun Control Legislation Under State Constitutional Provisions Securing Right to Bear Arms – Convicted Felons. 85 A.L.R.6th 641.

## § 12A. Right to hunt, fish and harvest wildlife.

The people have the right to hunt, fish and harvest wildlife, including by the use of traditional methods, subject only to laws and regulations that promote wildlife conservation and management and that preserve the future of hunting and fishing, as the Legislature may prescribe by general law. Public hunting and fishing shall be a preferred means of managing and controlling wildlife. This section may not be construed to modify any provision of law relating to

trespass, property rights, the regulation of commercial activities or the maintenance of levees pursuant to Article 11.

**HISTORY: Laws, 2012, Ch. 2024 (See Editor's note).**

**Editor's Note —** House Concurrent Resolution 30 (Chapter 2024), 2012 Regular Session, amended Article 3 of the Mississippi Constitution of 1890 by adding a new Section 12A. HCR 30 was approved by a majority of the electors of Mississippi at the November 4, 2014, election.

Article 15, § 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State. The Secretary of State certified the November 4, 2014, election on December 2, 2014.

The last paragraph of HCR 30 provides as follows:

"BE IT FURTHER RESOLVED, That the Attorney General of the State of Mississippi shall submit this resolution, immediately upon adoption by the Legislature of the State of Mississippi, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended."

However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted House Concurrent Resolution 30 (2012) to the United States Attorney General in order to technically meet the requirements of Section 5 and fulfill the Legislative direction in the final paragraph of the Resolution.

By letter dated March 6, 2014, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of HCR 30 (2012) and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the Legislative direction in the final paragraph of the Resolution.

## § 14. Due process.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. Notice and hearing.
8. Judicial proceedings–In general.
18. Crimes and criminal procedure – In general.
40. – – Sentence and punishment, crimes and criminal procedure.
42. – – Vague or indefinite statutes, crimes and criminal procedure.
56. Use of property–In general.
57. – – Zoning laws, use of property.
62. Regulation of business and professions – In general.
69. – – Utilities, regulation of business and professions.
82. Miscellaneous.

**1. In general.**

No due-process violation occurred when the Mississippi Division of Medicaid (DOM) was allowed to recoup the respiratory-therapist salaries that a long-term skilled nursing facility was erroneously paid because the facility was afforded all the due-process protections provided by

the DOM's administrative process and availed itself of the appeals afforded by both the chancery court and the appellate court. CLC of Biloxi, LLC v. Miss. Div. of Medicaid, 238 So. 3d 16, 2018 Miss. App. LEXIS 73 (Miss. Ct. App. 2018).

**2. Notice and hearing.**

Chancery court properly granted a preliminary injunction and reversed a decision by the Mississippi State Board of Contractors revoking a contractor's certificate of responsibility (COR) and in reinstating the COR because the Board violated the contractor's constitutional right to due process of law where where the Board failed to notify the contractor that it would consider prior complaints against the contractor, the Board had no authority to condition the contractor's ability to engage in the contracting business on its payment of a disputed debt, and the chancery court did not abuse its discretion by finding that the elements for a preliminary injunction were met. Miss. State Bd. of Contrs. v. Hobbs Constr., LLC, 291 So. 3d 762, 2020 Miss. LEXIS 57 (Miss. 2020).

Fines were void because the chancery court violated individuals' due process rights by failing to provide individuals with notice of the alleged Mississippi Public Records Act of 1983 violations and charges to be adjudicated against them; none of the individuals were named in either lawsuit in their individual capacity or given notice that they could potentially be fined. Miss. Dep't of Audit v. Gulf Publ. Co., 235 So. 3d 1452, 2016 Miss. App. LEXIS 170 (Miss. Ct. App. 2016), rev'd, in part, vacated, 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

**8. Judicial proceedings–In general.**

County did not show 2004 Miss. Private and Local Laws ch. 920, requiring the county to distribute portions of a gaming fee to a town and a school district, was unconstitutional because the county had no standing to invoke due process protections against the state. Tunica County v. Town of Tunica, 227 So. 3d 1007, 2017 Miss. LEXIS 179 (Miss. 2017).

It is outside the supreme court's authority to decide whether, as a matter of public policy, all indigent parents in Mississippi should be entitled to appointed counsel in termination proceedings; the Mississippi Legislature is the proper authority to address this important issue, as any public-policy determinations of the law are vested exclusively in the legislative branch of government. Blakeney v. McRee, 188 So. 3d 1154, 2016 Miss. LEXIS 87 (Miss. 2016).

While it was error to not make a determination on whether a father was entitled to appointed counsel before allowing him to proceed pro se, the error was harmless because he was given a fair and adequate hearing, and the presence of an attorney would not have made a difference; the due process provision of the Mississippi Constitution does not require the additional step of appointment of counsel in all termination cases. Blakeney v. McRee, 188 So. 3d 1154, 2016 Miss. LEXIS 87 (Miss. 2016).

State could not have proved its case against defendant without expert testimony, and the trial court's denial of funds for the procurement of expert witnesses denied defendant his due process rights under the Fourteenth Amendment to the United States Constitution and Miss. Const. art. III, § 14, as well as his right to a fair trial. Isham v. State, 161 So. 3d 1076, 2015 Miss. LEXIS 191 (Miss. 2015).

Although a property owner was afforded minimum due process under the United States and Mississippi Constitutions in a civil forfeiture case, the dismissal of his petition for a failure to attend court was problematic; even if the owner failed to serve a county with a copy of his petition, the county was notified that the petition was filed with the court. Moreover, the county participated in the contest by issuing witness subpoenas; assuming a dismissal of the claim was not required based on a speedy trial issue, the county had to show by a preponderance of the evidence that the property should have been forfeited. 1984 Chevy Camaro v. Lawrence County Sheriff's Dep't, 148 So. 3d 672, 2014 Miss. App. LEXIS 562 (Miss. Ct. App. 2014).

**18. Crimes and criminal procedure – In general.**

In a statutory rape case, defendant was denied due process under the federal and

state constitutions due to acts of prosecutorial misconduct; inter alia, there were improper comments on facts not in evidence, about defendant's character, and about the credibility of witnesses. White v. State, 228 So. 3d 893, 2017 Miss. App. LEXIS 81 (Miss. Ct. App.), cert. denied, 229 So. 3d 118, 2017 Miss. LEXIS 389 (Miss. 2017).

**40. – – Sentence and punishment, crimes and criminal procedure.**

Inmate's due-process rights were violated when the jury was allowed to consider an invalid aggravator supported by evidence that was not otherwise admissible, and this error was compounded when the Supreme Court of Mississippi affirmed his sentence. Gillett v. State, 148 So. 3d 260, 2014 Miss. LEXIS 287 (Miss. 2014).

**42. – – Vague or indefinite statutes, crimes and criminal procedure.**

Tailgating statute is not impermissibly vague and does not fail to give a driver notice of the prohibited conduct; the statute, coupled with the rules of the road, is sufficiently definite such that an ordinary person can understand the prohibited conduct and that law enforcement can avoid arbitrary enforcement. The statute is sufficiently specific to pass constitutional scrutiny. Nolan v. State, 182 So. 3d 484, 2016 Miss. App. LEXIS 21 (Miss. Ct. App. 2016).

**56. Use of property–In general.**

**57. – – Zoning laws, use of property.**

City was not entitled to enforce a zoning ordinance that regulated nonconforming uses to prohibit a mobile-home park operator from replacing individual mobile-homes that were removed from the mobile-home park because the city's interpretation of the ordinance, after more than thirty years of not enforcing the ordinance in that manner, was both arbitrary and capricious and violated the mobile-home park operator's constitutional right to enjoy its property. Cleveland MHC, LLC v. City of Richland, 163 So. 3d 284, 2015 Miss. LEXIS 230 (Miss. 2015).

City acted arbitrarily and capriciously in adopting a resolution prohibiting the replacement of mobile homes on vacated pads in a mobile home park where Richland, Miss., Ordinance § 405.1 was reasonably interpreted to construe the nonconforming use to relate to the mobile-home park as a whole, and the resolution expanding the ordinance deprived the owner of his constitutional right to enjoy his property. Cleveland MHC, LLC v. City of Richland, 163 So. 3d 302, 2014 Miss. App. LEXIS 442 (Miss. Ct. App. 2014), aff'd, 163 So. 3d 284, 2015 Miss. LEXIS 230 (Miss. 2015).

**62. Regulation of business and professions – In general.**

**69. – – Utilities, regulation of business and professions.**

Public Service Commission deprived ratepayers of procedural due process by failing to require notice to the ratepayers; no notice of the original filing was provided to the ratepayers. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

By approving increased rates based on "mirror construction work in progress" recovery, the Public Service Commission deprived the ratepayers of their money, and the increased rates were not being used to pay for funds during construction as provided by the Base Load Act but were confiscated through governmental decree by rate increase imposed by a privately owned corporation that could not spend it; the taking of private funds is a transfer of property and results in the deprivation of property. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

**82. Miscellaneous.**

Chancellor properly found that notice of the administrative was legally sufficient where the developer received a notice of intent and an opportunity for an administrative hearing. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1101, 2016 Miss. App. LEXIS 434 (Miss. Ct. App. 2016), aff'd in part and rev'd in part, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

### RESEARCH REFERENCES

**ALR.**

Double Jeopardy Considerations in State Criminal Cases – Supreme Court Cases. 77 A.L.R. Fed. 2d 477.

School's Violation of Student's Substantive Due Process Rights by Suspending or Expelling Student. 90 A.L.R.6th 235.

## § 15. Slavery and involuntary servitude prohibited; punishment for crime.

### RESEARCH REFERENCES

**ALR.**

Application of Section 1 of 13th Amendment to United States Constitution, U.S. Const. Amend. XIII, 1, Prohibiting Slavery and Involuntary Servitude – Labor Required as Punishment for Crime. 87 A.L.R.6th 109.

Application of Section 1 of 13th Amendment to United States Constitution, U.S. Const. Amend. XIII, 1, Prohibiting Slavery and Involuntary Servitude – Labor Required by Law or Force Not as Punishment for Crime. 88 A.L.R.6th 203.

## § 16. Ex post facto laws; impairment of contract.

### JUDICIAL DECISIONS

**4. Ex post facto laws–In general.**

Defendant's manslaughter sentence was an ex post facto violation because (1) the maximum sentence was 20 years when the crime was committed, but a statutory revision providing a maximum 30-year sentence was applied, and (2) the longer sentence was not ameliorative. Cozart v. State, 226 So. 3d 574, 2017 Miss. LEXIS 210 (Miss. 2017).

Defendant's enhanced sentence as a violent habitual offender based, in part, on a statute classifying defendant's prior burglary of a dwelling conviction as a violent crime that was enacted after defendant committed that crime, was not an ex post facto violation because the sentence was imposed for defendant's latest crime, which was aggravated due to being repetitive. Miller v. State, 225 So. 3d 12, 2017 Miss. App. LEXIS 246 (Miss. Ct. App. 2017).

Court of appeals declined to find that the sex-offender-registration statutory scheme violated the Ex Post Facto Clause because there was no intervening decision by either the United States Supreme Court or Mississippi Supreme Court. Williams v. State, 161 So. 3d 1124, 2015 Miss. App. LEXIS 197 (Miss. Ct. App. 2015).

**5. – – Death penalty cases, ex post facto laws.**

After finding that defendant's death sentence was unconstitutional, applying a sentence of life without parole violated the prohibition against ex post facto laws because, when defendant was sentenced, a life sentence carried parole eligibility after 10 years, and a sentence of life without parole obviously constricted defendant's opportunity to earn early release, and rendered the punishment for his crime more onerous than when he committed the crime; and applying the 1994 amendments to crimes committed prior to them clearly changed and increased the punishment attached to defendant's crime by adding life without eligibility for parole as an option. Blue v. State, — So. 3d —, 2020 Miss. LEXIS 369 (Miss. Oct. 8, 2020).

# § 17. Taking property for public use; due compensation.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Validity of statutes–In general.
4. —— Landowner's rights, validity of statutes.
17. Right to due compensation–In general.
22. – – Construction and use of streets and highways, right to due compensation.
28. Actions and remedies–In general.
29. – – Actions by or against political subdivisions, actions and remedies.
32. —— Negligence, actions and remedies.

**1. In general.**

Circuit court properly affirmed a county board of supervisors' decisions declining to abandon a road and declining to award damages to an owner because the road at issue was listed as public in the county road registry, it had been maintained by the public since the 1980s, and the owner's appeal was untimely. Seyfarth v. Adams Cty. Bd. of Supervisors, 267 So. 3d 767, 2019 Miss. LEXIS 162 (Miss. 2019).

**2. Validity of statutes–In general.**

**4. —— Landowner's rights, validity of statutes.**

City was not entitled to enforce a zoning ordinance that regulated nonconforming uses to prohibit a mobile-home park operator from replacing individual mobile-homes that were removed from the mobile-home park because the city's interpretation of the ordinance, after more than thirty years of not enforcing the ordinance in that manner, was both arbitrary and capricious and violated the mobile-home park operator's constitutional right to enjoy its property. Cleveland MHC, LLC v. City of Richland, 163 So. 3d 284, 2015 Miss. LEXIS 230 (Miss. 2015).

**17. Right to due compensation–In general.**

Circuit Court properly granted summary judgment in favor of a city because a lessee was not entitled to compensation where the city notified the lessee that it could no longer sell fireworks on newly annexed land, the regulation of fireworks sales was considered a police power, and the pre-existing-use doctrine and/or grandfathering was not applicable to ordinances relating to police powers, and the regulation of fireworks sales was considered a police power. Pearson's Fireworks, Inc. v. City of Hattiesburg, 212 So. 3d 778, 2014 Miss. LEXIS 391 (Miss. 2014).

**22. – – Construction and use of streets and highways, right to due compensation.**

It was not error for the special court to preclude testimony on damages to an owner's remaining property based on loss of access because the owner did not have the right of access along a sight flare in the before condition; if there was no change in the access, there could be no compensation for damages regarding loss of access, and the owner retained access along a road and along the highway outside of the sight flare. Gateway United Methodist Church v. Miss. Transp. Comm'n, 147 So. 3d 900, 2014 Miss. App. LEXIS 523 (Miss. Ct. App. 2014).

Special court of eminent domain did not abuse its discretion in disallowing testimony on damages to the remainder of an owner's for the taking of access along a highway by the Mississippi Transportation Commission (MTC) because the right of MTC to regulate entrances into the highway under the police power was well established and not a compensable taking. Gateway United Methodist Church v. Miss. Transp. Comm'n, 147 So. 3d 900, 2014 Miss. App. LEXIS 523 (Miss. Ct. App. 2014).

**28. Actions and remedies–In general.**

Landowners' inverse condemnation claim against the State of Mississippi did not fail as a matter of law due to the land in question being public trust tidelands because there was a factual dispute as to the boundary of the public trust tidelands,

which a jury resolved. State v. Murphy, 202 So. 3d 1243, 2016 Miss. LEXIS 446 (Miss. 2016).

When a developer sued a city, the city's public utilities commission, and a utilities department (department) for damage to the developer's property in installing utility lines, the developer's inverse condemnation failed because it was not alleged that the damage was committed for a "public use." Kelley v. Corinth PUC, 200 So. 3d 1107, 2016 Miss. App. LEXIS 36 (Miss. Ct. App.), cert. denied, — So. 3d —, 2016 Miss. LEXIS 393 (Miss. 2016), cert. denied, 203 So. 3d 598, 2016 Miss. LEXIS 394 (Miss. 2016), cert. denied, 203 So. 3d 599, 2016 Miss. LEXIS 403 (Miss. 2016).

**29. – – Actions by or against political subdivisions, actions and remedies.**

Property owners' inverse condemnation action against a city was time-barred because each heavy rain that caused a city ditch to damage the owners' property was not a separate taking, as the taking began when the owners knew damage had occurred. City of Tupelo v. O'Callaghan, 208 So. 3d 556, 2017 Miss. LEXIS 19 (Miss. 2017).

Property owners' inverse condemnation action against a city was time-barred because (1) the language "without limitation or qualification" in an opinion interpreting Miss. Const. art. 3, § 17 only applied to the type of damage, (2) no Mississippi authority held otherwise, so no constitutional rights were violated or materially impaired, and (3) the cause of action accrued upon discovering an injury, not the injury's cause. City of Tupelo v. O'Callaghan, 208 So. 3d 556, 2017 Miss. LEXIS 19 (Miss. 2017).

It was not error to hold the State of Mississippi completely liable for an inverse condemnation claim when a city took possession of the land for construction of a harbor, and the State was not involved in the harbor project, because the State assumed ownership of the property and leased the property to the city. State v. Murphy, 202 So. 3d 1243, 2016 Miss. LEXIS 446 (Miss. 2016).

Because property owners failed to plead a taking claim in their complaint, they were barred from attempting to argue that theory on appeal; even a liberal reading of the owners' complaint would not and did not put Mississippi Department of Transportation on notice of a constitutional taking claim. Garretson v. Miss. DOT, 156 So. 3d 241, 2014 Miss. LEXIS 579 (Miss. 2014).

**32. — Negligence, actions and remedies.**

Property owners' alleged personal injury damages were not recoverable under Miss. Const. art. 3, § 17 because nothing in that provision provided a remedy for injuries outside the scope of physical damage to property. City of Tupelo v. O'Callaghan, 208 So. 3d 556, 2017 Miss. LEXIS 19 (Miss. 2017).

## § 22. Double jeopardy.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. When jeopardy attaches–In general.
3. – – Judgments and judicial proceedings generally, when jeopardy attaches.
6. – – Mistrial, when jeopardy attaches.
9. – – Reversal of conviction, when jeopardy attaches.
14. Identity of offenses–In general.
23. Different elements, no double jeopardy.

**1. In general.**

Defendant's convictions on two counts of armed robbery for taking the same money did not violate the protection against double jeopardy in the Fifth Amendment or this section, because there were two victims. Reynolds v. State, 227 So. 3d 428, 2017 Miss. App. LEXIS 556 (Miss. Ct. App. 2017).

Although the prior domestic incident was mentioned in testimony, defendant was not tried for the alleged simple assault, nor was the jury asked to render a

finding of innocence or guilt with regard to the prior unadjudicated incident, and, in fact, the trial court gave a limiting instruction; thus, no jeopardy attached with regard to the prior domestic incident for purposes of a constitutional right being violated, and the court did not violate the rule prohibiting the admissibility of relevant evidence when the constitutions provided otherwise. Chase v. State, — So. 3d —, 2020 Miss. App. LEXIS 47 (Miss. Ct. App. Feb. 18, 2020).

Trial court did not err in determining that defendant failed to establish any double jeopardy violation because the case failed to involve facts wherein the State prosecuted defendant twice for the same crime; the offenses occurred on different dates, in different counties, and arose out of distinctly different facts. Williams v. State, 167 So. 3d 252, 2015 Miss. App. LEXIS 311 (Miss. Ct. App. 2015).

**2. When jeopardy attaches–In general.**

**3. – – Judgments and judicial proceedings generally, when jeopardy attaches.**

State was not collaterally estopped under the Double Jeopardy Clause from trying appellant for possession of a weapon by a convicted felon because whether appellant was in possession of a weapon was never litigated and resolved in his favor; appellant was not acquitted based on the jury's finding he had no weapon in his possession, but instead, he was merely permitted by the circuit court to plead guilty to the lesser-included charge of simple stalking. Johnson v. State, 159 So. 3d 601, 2014 Miss. App. LEXIS 667 (Miss. Ct. App. 2014).

**6. – – Mistrial, when jeopardy attaches.**

Defendant's retrial for murder following a mistrial due to a deadlocked jury did not violate double jeopardy. Thompson v. State, 269 So. 3d 301, 2018 Miss. App. LEXIS 175 (Miss. Ct. App. 2018).

Defendant's second trial did not violate double jeopardy because under the circumstances, which included a witness's unexpected family emergency, the importance of his testimony, and the uncertainty that a continuance would suffice, manifest necessity existed to declare a mistrial; defendant's valued right to have the trial concluded by the first tribunal was subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury. Montgomery v. State, 253 So. 3d 305, 2018 Miss. LEXIS 382 (Miss. 2018).

**9. – – Reversal of conviction, when jeopardy attaches.**

Capital murder defendant's multiple trials did not violate the Double Jeopardy Clause. Because defendant had not been acquitted, his convictions had not been upheld on appeal, and he had not received multiple punishments, the Double Jeopardy Clause had not been implicated. Flowers v. State, 240 So. 3d 1082, 2017 Miss. LEXIS 431 (Miss. 2017), rev'd, — U.S. —, 139 S. Ct. 2228, 204 L. Ed. 2d 638, 2019 U.S. LEXIS 4196 (U.S. 2019).

Defendant's six trials for the four murders did not violate his rights under the Double Jeopardy Clause because he had not been acquitted, his convictions had not been upheld on appeal, and he had not received multiple punishments, as his first,second, and third trials resulted in convictions that were overturned, and in his fourth and fifth trials the jury was unable to reach a unanimous decision. Because his double jeopardy protections had not been violated, defendant could not assert a due process claim on the same grounds. Flowers v. State, 158 So. 3d 1009, 2014 Miss. LEXIS 569 (Miss. 2014), vacated, — U.S. —, 136 S. Ct. 2157, 195 L. Ed. 2d 817, 2016 U.S. LEXIS 3930 (U.S. 2016).

**14. Identity of offenses–In general.**

Defendant was not subjected to double jeopardy because defendant was originally found guilty of capital murder and sentenced to death, but, on remand, a separate criminal information was filed for the crime of burglary, and defendant's guilty plea to that offense was accepted. Thus, defendant was allowed to plead guilty to murder (less than capital) and burglary in exchange for the State of Mis-

sissippi not seeking the death penalty. Pinkney v. State, 192 So. 3d 337, 2015 Miss. App. LEXIS 614 (Miss. Ct. App. 2015).

**23. Different elements, no double jeopardy.**

Defendant's motor-vehicle theft conviction did not violate the Double Jeopardy Clause because defendant's acquittal of conspiracy to commit motor-vehicle theft did not preclude any other conviction based on aiding and abetting motor-vehicle theft. Peel v. State, 283 So. 3d 203, 2019 Miss. App. LEXIS 104 (Miss. Ct. App. 2019).

No double-jeopardy violation was found in defendant's convictions for armed robbery because defendant committed four offenses, simultaneously, that arose from a common nucleus of operative fact, in that defendant took property from four separate individuals, thus committing four separate crimes. Miller v. State, 192 So. 3d 383, 2016 Miss. App. LEXIS 315 (Miss. Ct. App. 2016).

Trial court properly denied the inmate's post-conviction relief motion, because the inmate's conviction for capital murder and subsequent indictment and conviction for armed robbery did not constitute double jeopardy since each indictment charged separate and distinct offenses, involving different victims. Washington v. State, 158 So. 3d 1246, 2015 Miss. App. LEXIS 119 (Miss. Ct. App. 2015).

Appellant did not experience double jeopardy because he was never prosecuted twice for the same offense; burglary and sexual battery required proof of different facts, and thus, even if the prosecution had pursued the sexual-battery charge, appellant would not have been subjected to double jeopardy since he pleaded guilty to burglary. Stamps v. State, 151 So. 3d 248, 2014 Miss. App. LEXIS 651 (Miss. Ct. App. 2014).

## § 23. Searches and seizures.

### JUDICIAL DECISIONS

#### ANALYSIS

2. Searches and seizures –In general.
4. – – Expectation of privacy, searches and seizures.
5. – – Stops and detentions, searches and seizures.
8. – – Vehicular searches, searches and seizures.
12. – – Persons entitled to object, searches and seizures.
13. Search warrants–In general.
14. – – Affidavits, search warrants.
15. – – Description in affidavit or warrant, search warrants.
16. – – Showing of probable cause, search warrants.
23. Warrantless searches and seizures – In general.
24. – – Admissibility of evidence, warrantless searches and seizures.
28. – – Abandoned property, warrantless searches and seizures.
29. – – Arrest, warrantless searches and seizures.
30. – – Motor vehicle searches, warrantless searches and seizures.
31. – – Probable cause, warrantless searches and seizures.
31.5. – Reasonable suspicion – warrantless searches and seizures.
33. – – Consent or waiver, warrantless searches and seizures.
34. – – Exigent circumstances, warrantless searches and seizures.
36. – – Unreasonable searches and seizures, warrantless searches and seizures.

**2. Searches and seizures –In general.**

**4. – – Expectation of privacy, searches and seizures.**

Defendant was not entitled to suppress the cocaine found in an automobile because defendant was a mere passenger in the automobile and, as such, lacked standing to challenge the search of the automobile as defendant had no expectation of privacy. Holloway v. State, 282 So. 3d 537, 2019 Miss. App. LEXIS 301 (Miss. Ct. App. 2019).

Trial court did not err in denying defendant's motion to suppress evidence found

in his girlfriend's apartment because he had no Fourth Amendment right to prevent a search or seizure; defendant failed to establish he had a legitimate expectation of privacy in the apartment because the girlfriend consistently maintained he did not stay in the apartment. McCoy v. State, 160 So. 3d 705, 2014 Miss. App. LEXIS 594 (Miss. Ct. App. 2014), cert. dismissed, 160 So. 3d 704, 2015 Miss. LEXIS 362 (Miss. 2015).

**5. – – Stops and detentions, searches and seizures.**

Investigatory stop which led to defendant's arrest violated defendant's constitutional right to be free from unreasonable searches and seizures because the stop was based on a tip from an anonymous caller who reported a person driving erratically in a particular vehicle and flashing what appeared to be some type of badge at other drivers, but there was a lack of sufficient indicia of reliability in the case, coupled with the police officers' failure to corroborate the criminal activity reported. Cook v. Rankin County, 2014 Miss. LEXIS 506 (Miss. Oct. 16, 2014).

**8. – – Vehicular searches, searches and seizures.**

Defendant was not entitled to suppress the cocaine found in an automobile because defendant was a mere passenger in the automobile and, as such, lacked standing to challenge the search of the automobile as defendant had no expectation of privacy. Holloway v. State, 282 So. 3d 537, 2019 Miss. App. LEXIS 301 (Miss. Ct. App. 2019).

**12. – – Persons entitled to object, searches and seizures.**

Defendant was not entitled to suppress the cocaine found in an automobile because defendant was a mere passenger in the automobile and, as such, lacked standing to challenge the search of the automobile. Holloway v. State, 282 So. 3d 537, 2019 Miss. App. LEXIS 301 (Miss. Ct. App. 2019).

**13. Search warrants–In general.**

Defendant was not entitled to suppress cocaine found in the house in which defendant was staying because the search was based on probable cause and a valid search warrant—as police officers' observations corroborated the anonymous tips they had received about defendant selling cocaine and marijuana out of the house and the officers observed defendant attempting to eat marijuana when the automobile in which defendant was a passenger was stopped shortly after leaving the house—and the officers reasonably relied on a facially valid search warrant. Holloway v. State, 282 So. 3d 537, 2019 Miss. App. LEXIS 301 (Miss. Ct. App. 2019).

Defendant had standing to challenge the search and seizure of his computer files by the police after he had authorized a third party to work on his computer's operating system where the illicit photographs were not obtained as a direct result of the third party's private search but rather under the purported authority of an invalid search warrant. Chesney v. State, 165 So. 3d 498, 2015 Miss. App. LEXIS 277 (Miss. Ct. App. 2015).

**14. – – Affidavits, search warrants.**

Given that a confidential informant (CI) provided reliable information on the same day that the search warrant was issued and that the CI had given reliable information in the past, the information supporting the search warrants was sufficiently reliable; under a totality-of-the-circumstances review, it was evident that there was a substantial basis for the magistrate's determination that the search warrant's language concerning "stolen items" was supported by sufficiently reliable information. Sutton v. State,—So. 3d —, 2018 Miss. LEXIS 128 (Miss. Mar. 15, 2018).

**15. – – Description in affidavit or warrant, search warrants.**

Exclusionary rule applied because the evidence seized pursuant to the invalid warrant could not be purged of the primary taint of the illegal search; the warrant was so facially deficient that the executing officers could not have presumed it to be valid since they did not have any way to distinguish stolen items from property that was not stolen. Sutton v. State, 238 So. 3d 1150, 2018 Miss. LEXIS 128 (Miss. 2018)

Because a search warrant insufficiently described the stolen goods to be seized, and there was no probable cause for any drug-related language to be included in it, the warrant was invalid; there was no probable cause to issue a search warrant for any illegal drug activity because there was no substantial basis for the inclusion of the language related to drug activity. Sutton v. State, 238 So. 3d 1150, 2018 Miss. LEXIS 128 (Miss. 2018)

Search warrant failed adequately to describe the property to be seized because the description of "stolen items" was inadequate to inform the officers executing the search as to which items in a house were to be seized; there was no means to distinguish stolen items from any items that rightfully belonged in the house, and the warrant should have included a more particularized description of at least some of the property to be seized, especially since it was clear from the record it could have. Sutton v. State, 238 So. 3d 1150, 2018 Miss. LEXIS 128 (Miss. 2018)

Search warrant was void and unenforceable on its face because the section of the warrant denoting the location for the search to be executed was completely blank. Moreover, the good faith exception was inapplicable to the facts of the case. State ex rel. Miss. Bureau of Narcotics v. Canada, 164 So. 3d 1003, 2015 Miss. LEXIS 304 (Miss. 2015).

**16. – – Showing of probable cause, search warrants.**

Threshold requirements for probable cause to support the issuance of the original search warrant were not met, and therefore the trial court erred by denying defendant's motion to suppress the evidence obtained as a result of the first and second search warrants, where the chief admitted that he had only spoken with the confidential informant a couple of times and he had never met, and there was nothing in the affidavit to establish that the information provided by the informant was credible or reliable or that the chief attempted to corroborate the informant's statement through additional independent investigation. Chesney v. State, 165 So. 3d 498, 2015 Miss. App. LEXIS 277 (Miss. Ct. App. 2015).

**23. Warrantless searches and seizures – In general.**

**24. – – Admissibility of evidence, warrantless searches and seizures.**

Because defendant had been lawfully detained on grounds of reasonable suspicion, his flight provided Mississippi Bureau of Narcotic agents with justification to pursue him; whether defendant had been frisked prior to his flight, he was up to that point lawfully detained under Terry and temporarily not free to leave, but his unprovoked flight was a consummate act of evasion, designed to prevent his further detention and carried out by his desire to avoid jail. Cole v. State,—So. 3d —, 2018 Miss. LEXIS 54 (Miss. Feb. 1, 2018).

Anonymous tip, alone, did not possess sufficient indicia of reliability to provide Mississippi Bureau of Narcotic agents with reasonable suspicion to stop a group or its individual members because they were merely acting upon information provided through an anonymous tip; however, the agents personally observed "suspicious" behavior as soon as they arrived on the scene, thereby establishing an independent ground for reasonable suspicion. Cole v. State,—So. 3d —, 2018 Miss. LEXIS 54 (Miss. Feb. 1, 2018).

Defendant was not entitled to suppress a small amount of methamphetamine that was seized by conservation officers when they entered onto the private property of defendant's grandparent because the area where the evidence was seized was on an open field across the road from defendant's home and outside the curtilage of defendant's home. Therefore, defendant lacked standing to contest the search as defendant did not have a reasonable expectation of privacy on the open land of defendant's grandparent. Tullos v. State, 287 So. 3d 1014, 2019 Miss. App. LEXIS 598 (Miss. Ct. App. 2019).

Trial court did not err in denying defendant's motion to suppress as a deputy had reasonable suspicion to stop defendant because the anonymous tips stated that certain named individuals would be traveling in a specific car heading to a particular location, and that those individuals were involved in the robbery of the vic-

tim's liquor store; and, when the deputy saw the car matching the description in the be-on-the-lookout notice, he observed one of the individuals allegedly involved in the robbery in the passenger seat; and because defendant's flight was sufficient for the deputy to follow in pursuit. Hamp v. State, 207 So. 3d 684, 2016 Miss. App. LEXIS 790 (Miss. Ct. App. 2016).

**28. – – Abandoned property, warrantless searches and seizures.**

Circuit court did not err in admitting into evidence a firearm and marijuana found in the street because defendant surrendered his Fourth Amendment protections as to those items when he abandoned them; defendant was not considered arrested under the Fourth Amendment until he was captured by the chasing Mississippi Bureau of Narcotic agents and placed into custody because he was in no way restrained during his flight, and thus, no arrest occurred within the confines of the Fourth Amendment. Cole v. State, — So. 3d —, 2018 Miss. LEXIS 54 (Miss. Feb. 1, 2018).

**29. – – Arrest, warrantless searches and seizures.**

Because the pursuit, seizure, and ultimate arrest of defendant were legal, it necessarily followed that the additional marijuana found on his person was lawfully obtained; therefore, it was not fruit of the poisonous tree. Cole v. State, — So. 3d —, 2018 Miss. LEXIS 54 (Miss. Feb. 1, 2018).

Mississippi Bureau of Narcotic agents' decision to conduct a Terry frisk of defendant's person was justified, and thus, defendant's subsequent, unprovoked flight from his lawful, temporary detention provided the agents with further reasonable suspicion to pursue him, and ultimately, the probable cause necessary to effectuate an arrest. Cole v. State, — So. 3d —, 2018 Miss. LEXIS 54 (Miss. Feb. 1, 2018).

Scope of investigatory stop was not exceeded by Mississippi Bureau of Narcotic agents' conduct because the agents discovered a firearm, and thus, they were justified in their decision to conduct a Terry frisk of defendant person in order to determine whether he possessed a weapon that could be used to assault the agents. Cole v. State, — So. 3d —, 2018 Miss. LEXIS 54 (Miss. Feb. 1, 2018).

Mississippi Bureau of Narcotic agents' investigatory stop was lawful under Terry, both at its inception and in its scope, because the agents were entitled to conduct a carefully limited search of the outer clothing of defendant in an attempt to discover weapons the could be used toassault them; defendant was not under arrest because he was not physically placed under arrest and did not personally submit to any show of authority. Cole v. State, — So. 3d —, 2018 Miss. LEXIS 54 (Miss. Feb. 1, 2018).

Defendant was not illegally arrested because while he was detained, police officers gained consent to search his girlfriend's apartment and found the drugs defendant was trying to destroy, along with the other incriminating items in the apartment; at that point, the officers probable cause to arrest defendant, and based on that arrest, the officers were permitted to search defendant's pockets. McCoy v. State, 160 So. 3d 705, 2014 Miss. App. LEXIS 594 (Miss. Ct. App. 2014), cert. dismissed, 160 So. 3d 704, 2015 Miss. LEXIS 362 (Miss. 2015).

**30. – – Motor vehicle searches, warrantless searches and seizures.**

Defendant was not entitled to suppress the cocaine found in an automobile because defendant was a mere passenger in the automobile and, as such, lacked standing to challenge the search of the automobile as defendant had no expectation of privacy. Holloway v. State, 282 So. 3d 537, 2019 Miss. App. LEXIS 301 (Miss. Ct. App. 2019).

**31. – – Probable cause, warrantless searches and seizures.**

Controlled substances and firearm seized during a traffic stop was properly admitted because a deputy had sufficient reason and probable cause to stop defendant's car when he observed defendant violating the seat belt law; even prior to the deputy's search of the vehicle, defendant had visibly committed a minimum of four misdemeanor offenses. Wallace v. State, — So. 3d —, 2019 Miss. App. LEXIS

170 (Miss. Ct. App. Apr. 23, 2019), cert. denied, 279 So. 3d 1086, 2019 Miss. LEXIS 419 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 449 (Miss. 2019).

Stop of defendant's vehicle was not pretextual because the deputy knew the confidential informant and found that person reliable; the deputy testified that he followed defendant before turning on his blue lights and did not see any traffic violations during that span, but he realized that when he was driving by, the driver was not wearing his seatbelt, and that was sufficient for purposes of the original stop. Wallace v. State, — So. 3d —, 2019 Miss. App. LEXIS 170 (Miss. Ct. App. Apr. 23, 2019), cert. denied, 279 So. 3d 1086, 2019 Miss. LEXIS 419 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 449 (Miss. 2019).

Circuit court did not err in denying defendant's motion to suppress because, at minimum, Mississippi Bureau of Narcotic agents were justified in their stop of at least the first individual observed acting suspiciously; use based upon the agents' personal observation of suspicious activity, as well as their corroboration of details provided in an anonymous tip, they possessed specific, articulable facts constituting a reasonable suspicion that criminal activity was afoot. Cole v. State, 242 So. 3d 31, 2018 Miss. LEXIS 54 (Miss. 2018).

Probable cause for a search did not exist based on the officer's testimony that he became suspicious because defendant acted nervous and looked at and held onto his right shoe. Reasonable suspicion is not established base on mere hunches or looking suspicious. i May v. State, 222 So. 3d 1074, 2016 Miss. App. LEXIS 810 (Miss. Ct. App. 2016), cert. denied, 223 So. 3d 785, 2017 Miss. LEXIS 309 (Miss. 2017).

Police officer possessed probable cause to search the trunk of a driver's vehicle after his K9 alerted to the area because the officer made a valid traffic stop, and then he acted within his authority when he deployed his trained K9 for a free air sniff outside the vehicle. Bobo v. State ex rel. Pelahatchie Police Dep't (In re $137,325.00 in U.S. Currency), 204 So. 3d 317, 2016 Miss. App. LEXIS 746 (Miss. Ct. App. 2016).

**31.5. – Reasonable suspicion – warrantless searches and seizures.**

Controlled substances and firearm seized during a traffic stop was properly admitted because a tip received from a confidential informant was reliable and from a known source; there was then a "who," a "what," and a "where," conjoined with a belief that at least a misdemeanor offense was being committed, and once the stop had been initiated, the stench of marijuana corroborated the informant's information. Wallace v. State, — So. 3d —, 2019 Miss. App. LEXIS 170 (Miss. Ct. App. Apr. 23, 2019), cert. denied, 279 So. 3d 1086, 2019 Miss. LEXIS 419 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 449 (Miss. 2019).

Police had reasonable suspicion to stop defendant's vehicle without a warrant because the officer stopped the vehicle based on information he received from a sergeant, the sergeant had seen two men exit the house and get into the blue vehicle, and the two men's appearances fit the description of two of the suspects that an accomplice had previously provided to the police Johnson v. State, 242 So. 3d 145, 2017 Miss. App. LEXIS 335 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 69, 2018 Miss. LEXIS 190 (Miss. 2018).

**33. – – Consent or waiver, warrantless searches and seizures.**

While defendant voluntarily consented to the removal of his shoe, defendant would not have understood that he was consenting to the officer taking apart and searching the lighter that fell from his shoe, rather, the scope of defendant's consent only extended to the contents of his shoe that were plainly viewable as incriminating or dangerous. May v. State, 222 So. 3d 1074, 2016 Miss. App. LEXIS 810 (Miss. Ct. App. 2016), cert. denied, 223 So. 3d 785, 2017 Miss. LEXIS 309 (Miss. 2017).

Trial court did not err in denying defendant's motion to suppress, as the owner of the mobile home on which defendant resided consented to a search of the mobile home and the shed, which was within the home's curtilage. Whitehead v. State, 187 So. 3d 1091, 2016 Miss. App. LEXIS 182 (Miss. Ct. App. 2016).

**34. – – Exigent circumstances, warrantless searches and seizures.**

Trial court did not err in denying defendant's motion to suppress evidence found in his girlfriend's apartment because the search was only conducted after the officers obtained written consent from the girlfriend, who was the apartment's leaseholder. McCoy v. State, 160 So. 3d 705, 2014 Miss. App. LEXIS 594 (Miss. Ct. App. 2014), cert. dismissed, 160 So. 3d 704, 2015 Miss. LEXIS 362 (Miss. 2015).

**36. – – Unreasonable searches and seizures, warrantless searches and seizures.**

Investigative stop of defendant's vehicle violated the Fourth Amendment and Miss. Const. art. 3, § 23, where an anonymous caller reported a person driving erratically and flashing what appeared to be some type of badge at other drivers, but the officers took no action to corroborate the reported criminal activity prior to stopping defendant, and thus, the tip lacked the indicia of reliability necessary to justify an investigative stop. Cook v. State, 159 So. 3d 534, 2015 Miss. LEXIS 130 (Miss. 2015).

### RESEARCH REFERENCES

**ALR.**

Permissibility under Fourth Amendment of Investigatory Traffic Stop Based Solely on Anonymous Tip Reporting Drunk Driving. 84 A.L.R.6th 293.

Expectation of Privacy in and Discovery of Social Networking Web Site Postings and Communications. 88 A.L.R.6th 319.

## § 24. Open courts; remedy for injury.

### JUDICIAL DECISIONS

#### ANALYSIS

1. Construction and application.
17. Will contests.

**1. Construction and application.**

Because the courts are open to every person, an alleged undocumented immigrant is not barred from tort recovery solely based on his or her alleged undocumented status. McKean v. Yates Eng'g Corp., 200 So. 3d 431, 2016 Miss. LEXIS 385 (Miss. 2016).

It was error to dismiss an employee's claim to recover damages for injuries they sustained when a scaffolding collapsed due to his immigration status because the employee could very well have proven his claims without presenting evidence of his status as an immigrant; the Mississippi Constitution does not limit access to the courts and leaves open for every person a remedy for injury done to his or her person. McKean v. Yates Eng'g Corp., 200 So. 3d 431, 2016 Miss. LEXIS 385 (Miss. 2016).

**17. Will contests.**

Forfeiture provisions in wills in Mississippi were enforceable unless a will contest was founded upon probable cause and made in good faith. Thus, a complainant was entitled to the complainant's inheritance as provided in the decedent's will because the forfeiture provision in the decedent's will was unenforceable against the complainant in that, under the totality of the circumstances, the complainant's will contest was based upon probable cause and was brought in good faith. Parker v. Benoist, 160 So. 3d 198, 2015 Miss. LEXIS 113 (Miss. 2015).

## § 25. Access to courts.

### JUDICIAL DECISIONS

**1. In general.**

Constitution was violated because a father, individually, was removed from the courtroom during the testimony of the mother's daughter from a previous relationship, and the presence of his counsel did not cure the error; however, the error was harmless because the father's counsel was present during the entire questioning, and the father failed to explain how the examination would have changed had he been present alongside his counsel. Miller v. Smith, 229 So. 3d 100, 2017 Miss. LEXIS 427 (Miss. 2017).

Chancellor's order to clear the courtroom while daughter testified did not violate father's rights under Section 25, Article 3 of the Mississippi Constitution because the father's counsel was present during his child's testimony. Miller v. Smith, 229 So. 3d 148, 2016 Miss. App. LEXIS 749 (Miss. Ct. App. 2016), aff'd, 229 So. 3d 100, 2017 Miss. LEXIS 427 (Miss. 2017).

It was error to dismiss an employee's claim to recover damages for injuries they sustained when a scaffolding collapsed due to his immigration status because the employee could very well have proven his claims without presenting evidence of his status as an immigrant; the Mississippi Constitution does not limit access to the courts and leaves open for every person a remedy for injury done to his or her person. McKean v. Yates Eng'g Corp., 200 So. 3d 431, 2016 Miss. LEXIS 385 (Miss. 2016).

## § 26. Rights of accused; state grand jury proceedings.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
1.5. Applicability.
2. Public trial.
3. Venue of trial.
4. Self-incrimination – In general.
18. – – Interrogation after counsel requested, self-incrimination.
33. – – Comment on refusal to testify generally, self-incrimination.
39. Speedy trial – In general.
43. – – Invocation of right, speedy trial.
44. – – Factors considered, speedy trial.
45. – – Time of demand for trial, speedy trial.
46. – – Delay attributable primarily to defendant, speedy trial.
47. – – Presumptively prejudicial delay, speedy trial.
49. – – Delay attributable primarily to state, speedy trial.
58. – – Waiver, speedy trial.
59. Fair trial – In general.
66. – – Conduct of trial, fair trial.
72. – – Jury trial.
73. Impartial jury – In general.
81. – – Capital punishment, impartial jury.
89. Nature and cause of accusation – In general.
93. – – Specificity, nature and cause of accusation.
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105. Right to be present at trial–In general.
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108. Confrontation of witnesses – In general.
113. – – Child witnesses, confrontation of witnesses.
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124. Right of accused to be heard.
125. Right to counsel – In general.
127. – – Pro se or hybrid representation, right to counsel.
129. – – Invocation of right to counsel.
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141. – – Waiver, right to counsel.
142. Ineffectiveness of counsel – In general.
143. – – Waiver of issue, ineffectiveness of counsel.
144. – – Factors considered, ineffectiveness of counsel.
149. – – Conduct of trial, ineffectiveness of counsel.
150. – – Examination of witnesses, ineffectiveness of counsel.
151. – – Objection to admission or suppression of evidence, ineffectiveness of counsel.
152. – – Objection to jury instructions, ineffectiveness of counsel.
159. – – Different result or trial outcome, ineffectiveness of counsel.
161. – – Burden of proof, ineffectiveness of counsel.
162. – – Post-conviction remedies, ineffectiveness of counsel.
164. Abatement ab initio.

**1. In general.**

In a murder case, even if defendant's constitutional rights were violated, no overwhelming injustice occurred because there was overwhelming evidence presented of his guilt. Offenses to certain constitutional rights did not require a per se reversal. Hall v. State, — So. 3d —, 2016 Miss. LEXIS 125 (Miss. Mar. 17, 2016).

**1.5. Applicability.**

Chancery court did not violate the Confrontation Clause by allowing a child to testify outside of the father's presence; the Confrontation Clause only applies to criminal cases. Miller v. Smith, 229 So. 3d 148, 2016 Miss. App. LEXIS 749 (Miss. Ct. App. 2016), aff'd, 229 So. 3d 100, 2017 Miss. LEXIS 427 (Miss. 2017).

**2. Public trial.**

Circuit court's reasoning for excluding the public from the victim's testimony, because the testimony was sensitive and related to domestic violence, did not overcome defendant's constitutional right to a public trial. Turner v. State, 292 So. 3d 1006, 2020 Miss. App. LEXIS 84 (Miss. Ct. App. 2020).

Trial court erred in closing the courtroom during a victim's testimony in order to show a video that defendant allegedly took of her because the decision was overly broad and violative of defendant's constitutional right to a public trial where the video showed the victim undressed from the waist up and lasted a little over a minute, the victim's testimony was not needed to explain anything on the video, and it could have been played at a different time. Pierce v. State, 250 So. 3d 493, 2018 Miss. App. LEXIS 41 (Miss. Ct. App. 2018).

Defendant's friend was not kicked out of the courtroom but left of her own accord after creating a disruption, and the record did not show that the circuit court excluded any member of the public from attending defendant's trial, and his contention that the circuit court denied him a public trial was without merit. Parks v. State, 228 So. 3d 853, 2017 Miss. App. LEXIS 58 (Miss. Ct. App.), cert. denied, 220 So. 3d 977, 2017 Miss. LEXIS 262 (Miss. 2017).

In addition to receiving threats, the witnesses who were called to testify reported the same vehicles continuously driving by their houses at night during the trial, plus the judge noted that the courtroom was more crowded than usual and emotions were running high; there was no issue with the judge's limited closure of the courtroom during the testimony of these witnesses for their own safety and the safety of court personnel. Lewis v. State, 140 So. 3d 1290, 2014 Miss. App. LEXIS 353 (Miss. Ct. App. 2014).

**3. Venue of trial.**

Court of Appeals properly affirmed defendant's conviction and sentence for Medicaid fraud because the statutory venue provisions were limited to civil cases, defendant's trial was in the county "where the offense was committed," as provided by the state constitution, and Medicaid fraud was exempt from the two-year statute of limitations inasmuch as it was a species of or within the definition of "obtaining money or property under false pretenses or by fraud." Azomani v. State, 222 So. 3d 282, 2017 Miss. LEXIS 220 (Miss. 2017).

**4. Self-incrimination – In general.**

Defendant's right against self-incrimination was not violated because, after the circuit court advised defendant of his constitutional rights, he testified on his own behalf; in so doing, he waived his privilege against self-incrimination since he voluntarily and knowingly chose to take the stand and testify; and the State's line of questioning pursued during defendant's cross-examination was a comment on his lack of a defense (or his assertion of a new defense at trial) rather than an impermissible comment on his right against self-incrimination; thus, the circuit court did not err by not declaring a mistrial. Mack v. State, 237 So. 3d 778, 2017 Miss. App. LEXIS 334 (Miss. Ct. App. 2017), cert. denied, 237 So. 3d 1270, 2018 Miss. LEXIS 90 (Miss. 2018).

There was no evidence that defendant was forced against his will by his attorney to testify. Rowsey v. State, 188 So. 3d 486, 2015 Miss. LEXIS 573 (Miss. 2015).

**18. – – Interrogation after counsel requested, self-incrimination.**

Circuit court properly admitted defendant's confession because defendant initiated further communication with the investigator and then stated he wanted a lawyer, confused because defendant had requested to speak with him a second time to talk about "the situation," the investigator sought to clarify defendant's request by reading him his Miranda rights, and after defendant was read his rights, he voluntarily waived his rights and spoke to the investigator. Jackson v. State, — So. 3d —, 2020 Miss. App. LEXIS 5 (Miss. Ct. App. Jan. 7, 2020), cert. denied, 300 So. 3d 43, 2020 Miss. LEXIS 303 (Miss. 2020).

**33. – – Comment on refusal to testify generally, self-incrimination.**

Jury was not improperly instructed because a prosecutor did not comment on defendant's failure to testify, so no curative instruction was required. Young v. State, 236 So. 3d 49, 2017 Miss. LEXIS 439 (Miss. 2017).

**39. Speedy trial – In general.**

Defendant showed no violation of the constitutional right to a speedy trial because, while an extreme delay weighed against the State, (1) the reasons for the delay were neutral, as both parties sought continuances, (2) defendant's failure to assert the right until appeal weighed against defendant, and (3) defendant did not show actual prejudice, as nothing supported defendant's assumption that defendant's expert would have been allowed to testify at an earlier trial. Williams v. State, 291 So. 3d 418, 2020 Miss. App. LEXIS 55 (Miss. Ct. App. 2020).

Based on its analysis under the Barker factors on the facts of this case, the appellate court found that defendant was not denied the right to a speedy trial. Springer v. State, 187 So. 3d 1050, 2015 Miss. App. LEXIS 589 (Miss. Ct. App. 2015).

Defendant's right to a speedy trial was not violated despite the fact that 377 days passed between the date of arrest and trial, as defendant failed to show an improper reason for the delay or that he was prejudiced by the delay. Hoskins v. State, 172 So. 3d 1242, 2015 Miss. App. LEXIS 37 (Miss. Ct. App.), cert. denied, — So. 3d —, 2015 Miss. LEXIS 449 (Miss. 2015).

Owner's right to a speedy trial was implicated by a nine-year delay in a civil forfeiture case because length of the delay was substantial, the owner actively pursued his right to contest the forfeiture proceeding as soon as his criminal proceedings ended, he asserted his right to a speedy trial, and he alleged that he was prejudiced by the delay. 1984 Chevy Camaro v. Lawrence County Sheriff's Dep't, 148 So. 3d 672, 2014 Miss. App. LEXIS 562 (Miss. Ct. App. 2014).

**43. – – Invocation of right, speedy trial.**

No speedy trial violation occurred because defendant did not appear to assert his right to a speedy trial but only filed three motions to dismiss for speedy-trial violations, Scott v. State, 231 So. 3d 1024, 2016 Miss. App. LEXIS 404 (Miss. Ct. App. 2016), aff'd, 231 So. 3d 995, 2017 Miss. LEXIS 440 (Miss. 2017).

Defendant's right to a speedy trial was not violated because although defendant eventually asserted his right to a speedy trial, he continued to take steps that were inconsistent with his claim that he was ready for trial; defendant waited almost eight months to assert his right, and after asserting his right to a speedy trial, defendant effectively undermined his request by seeking the recusal of the trial judge and filing numerous pretrial motions. Newell v. State, 175 So. 3d 1260, 2015 Miss. LEXIS 505 (Miss. 2015).

**44. – – Factors considered, speedy trial.**

Despite the 16-month delay between his indictment and trial, defendant's speedy trial rights were not violated where the record was silent as to the cause of the delay, defendant did not demand dismissal for failure to provide a speedy trial until after trial, and defendant failed to prove any actual prejudice. Harris v. State, — So. 3d —, 2020 Miss. App. LEXIS 499 (Miss. Ct. App. Aug. 25, 2020).

Defendant's constitutional right to a speedy trial was not violated because, although the delay of 573 days was presumptively prejudicial, his request for a mental evaluation after demanding a speedy trial did not manifest a desire to be tried promptly; and he failed to demonstrate prejudice as, inter alia, there was no evidence that defendant tried to subpoena the alleged perpetrator of the crime or made any attempt at all to locate him. Brown v. State, 285 So. 3d 671, 2019 Miss. App. LEXIS 263 (Miss. Ct. App.), cert. denied, 284 So. 3d 753, 2019 Miss. LEXIS 438 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 483 (Miss. 2019).

Defendant's right to a speedy trial was not violated by the delay of over eight months, as defendant failed to pursue his speedy trial demand, acquiesced to codefendant's continuance requests, and failed to show prejudice. Harris v. State, 174 So. 3d 314, 2015 Miss. App. LEXIS 428 (Miss. Ct. App. 2015).

Defendant's right to a speedy trial was not violated because while defendant arguably suffered slight prejudice due to a witness's unavailability at the second trial, that prejudice did not affect his primary theory of self-defense, which he was able to assert at both trials; defendant offered no evidence as to whether the witness's testimony would have differed at the second trial had he been present. Newell v. State, 175 So. 3d 1260, 2015 Miss. LEXIS 505 (Miss. 2015).

Defendant's right to a speedy trial was not violated because during the eight months and nine days between his arrest and trial, defendant never asserted his right to a speedy trial and not seek dismissal from the trial court based on the violation of his speedy-trial rights; defendant showed no prejudice because he failed to establish how his defense was hampered by the delay. McCoy v. State, 160 So. 3d 705, 2014 Miss. App. LEXIS 594 (Miss. Ct. App. 2014), cert. dismissed, 160 So. 3d 704, 2015 Miss. LEXIS 362 (Miss. 2015).

**45. – – Time of demand for trial, speedy trial.**

For purposes of defendant's constitutional right to a speedy trial, the three and a half year delay before his third trial created a presumption of prejudice; however, the State provided good cause for its delays, and defendant substantially contributed to the delays because, although he asserted his right to a speedy trial, he waived his assertion when he filed a continuance, and he did not reassert his right; and the only prejudice defendant argued was the length of his incarceration, but not anxiety or the impairment of his defense. Walker v. State, 196 So. 3d 978, 2015 Miss. App. LEXIS 584 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 613, 2016 Miss. LEXIS 328 (Miss. 2016).

**46. – – Delay attributable primarily to defendant, speedy trial.**

Defendant's constitutional right to a speedy trial was not violated because,

although the delay of approximately five years and two months was presumptively prejudicial, the vast majority of the delay was attributable to continuances generated by the defense; of the approximately five-year delay between defendant's arrest and his trial, 339 days were attributable to the State, and 1,548 days were attributable to defendant; and defendant was not prejudiced by the delay as any anxiety or stress that defendant experienced due to the delay was outweighed by the fact that his defense was assisted, not hindered, by the delay. Perry v. State, 233 So. 3d 750, 2017 Miss. LEXIS 224 (Miss. 2017).

While the 1,099 days between defendant's indictment and trial was presumptively prejudicial, defendant's right to a speedy trial was not violated, as most of the delay resulted from the substantial amount of time it took to schedule and prepare a mental evaluation for the defense and defendant was not prejudiced by the delay. Rowsey v. State, 188 So. 3d 486, 2015 Miss. LEXIS 573 (Miss. 2015).

Defendant's right to a speedy trial was not violated because although the total delay in the case was lengthy, the majority of the delay was justified by good cause or was attributable to defendant's actions; the State's efforts to retry defendant within two months after the reversal of his conviction were more than reasonable, and defendant, not the State requested a continuance to obtain a copy of the transcript from the first trial. Newell v. State, 175 So. 3d 1260, 2015 Miss. LEXIS 505 (Miss. 2015).

Defendant's right to a speedy trial was not violated because although the total delay in the case was lengthy, the majority of the delay was justified by good cause or was attributable to defendant's actions; a witness's unavailability constituted good cause for the final delay in the case because it gave the parties additional time to attempt to locate the witness and allowed defendant time to prepare for trial in his absence. Newell v. State, 175 So. 3d 1260, 2015 Miss. LEXIS 505 (Miss. 2015).

While the 1,995-day delay between his arrest and trial was presumptively prejudicial, defendant's right to a speedy trial under the Sixth Amendment and this section was not violated since the continuances were either agreed to, a result of a change in counsel, or a result of defendant's failure to appear. Ames v. State, 191 So. 3d 746, 2015 Miss. App. LEXIS 516 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 207, 2016 Miss. LEXIS 214 (Miss. 2016).

**47. – – Presumptively prejudicial delay, speedy trial.**

No speedy trial violation occurred because defendant failed to show that his defense suffered prejudice due to any lost evidence; defendant had the opportunity to cross-examine an officer and called a detective to testify, he did not demonstrate what the missing police reports or the 911 recording could have shown, and he failed to cite to the name or potential testimony of any allegedly lost witness. Scott v. State, 231 So. 3d 1024, 2016 Miss. App. LEXIS 404 (Miss. Ct. App. 2016), aff'd, 231 So. 3d 995, 2017 Miss. LEXIS 440 (Miss. 2017).

**49. – – Delay attributable primarily to state, speedy trial.**

Defendant's constitutional right to a speedy trial was not violated by the over two year delay between his indictment and his trial because, although the length and reason for the delay weighed against the State, defendant never demanded a speedy trial until the day before his trial was to begin and he failed to articulate any prejudice. Ford v. State, 281 So. 3d 1109, 2019 Miss. App. LEXIS 255 (Miss. Ct. App. 2019).

**58. – – Waiver, speedy trial.**

There was no violation of defendant's constitutional right to a speedy trial, where defendant never demanded a speedy trial, did not mention the right for almost three years, and when defendant finally did raise the issue, his trial was only four months away. More importantly, defendant failed to articulate any prejudice whatsoever. Collins v. State, 232 So. 3d 739, 2017 Miss. App. LEXIS 297 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 525 (Miss. 2017), cert. denied, 229 So. 3d 123, 2017 Miss. LEXIS 493 (Miss. 2017).

**59. Fair trial – In general.**

Defendant's contention that the venire was biased, resulting in an unfair trial, was rejected where nothing in the record showed that jurors in defendant's instant case were aware of the arrests for perjury of two jurors in defendant's prior trial, the potential jurors that defendant challenged for cause were not selected to serve and he did not exercise all of his peremptory challenges, and defendant's suggested remedies of quashing the entire venire or providing a cooling off period until a fair and impartial jury could be empaneled were not viable. Flowers v. State, 158 So. 3d 1009, 2014 Miss. LEXIS 569 (Miss. 2014), vacated, — U.S. —, 136 S. Ct. 2157, 195 L. Ed. 2d 817, 2016 U.S. LEXIS 3930 (U.S. 2016).

Defendant failed to show that the State violated his due-process rights by losing or destroying evidence with an apparent exculpatory value where the investigators had not been able to obtain a copy of the video that was clear or helpful, a detective possessed only an unreadable copy of the video on her jump drive, and the detective attempted to obtain the surveillance video in a readable format, but after several unsuccessful attempts, she learned that the business's equipment had recorded over the old footage. Tillis v. State, 176 So. 3d 37, 2014 Miss. App. LEXIS 446 (Miss. Ct. App. 2014), cert. denied, 178 So. 3d 333, 2015 Miss. LEXIS 528 (Miss. 2015).

**66. – – Conduct of trial, fair trial.**

Circuit court erred by excluding a portion of the testimony of defendant's only witness, based on a discovery violation, because there was no evidence that defendant's late disclosure of the witness was motivated by a desire to obtain a tactical advantage at trial. Furthermore, reversal and remand for a new trial was required because defendant was prejudiced by the circuit court's improper exclusion of the testimony. Willard v. State, 219 So. 3d 569, 2017 Miss. App. LEXIS 262 (Miss. Ct. App. 2017).

**72. – – Jury trial.**

Circuit court was not partial in dismissing members of the venire because the undisputed record evidence established that defendant did not object either to the dismissal of Juror 26 or to the circuit court's statement that the parties agreed to her dismissal; as to his other arguments related to the makeup of the venire, defendant never objected to the potential jurors who remained on the venire; and each potential juror affirmed that he or she could remain fair and impartial if selected for defendant's trial. Mack v. State, 237 So. 3d 778, 2017 Miss. App. LEXIS 334 (Miss. Ct. App. 2017), cert. denied, 237 So. 3d 1270, 2018 Miss. LEXIS 90 (Miss. 2018).

**73. Impartial jury – In general.**

Trial court's instruction that Juror Number 1 act as foreperson did not amount to plain error, as two witnesses testified that defendant was the shooter and thus, the weight of the evidence was overwhelming. Hall v. State, 201 So. 3d 424, 2016 Miss. LEXIS 540 (Miss. 2016).

Defendant made no assertion that his Sixth Amendment right to an impartial jury was violated due to the jury-selection process because he did not claim the jury was composed of incompetent jurors; defendant failed to show how the departure from that statute and rules regarding peremptory challenges affected his fundamental, substantive rights or otherwise led to a manifest miscarriage of justice. Carr v. State, 190 So. 3d 1, 2015 Miss. App. LEXIS 605 (Miss. Ct. App. 2015).

Misallocation of defendant's peremptory challenges did not affect a fundamental, substantive right because so long as the jury that sat was impartial, the fact that defendant had to pool his regular and alternate peremptory challenges to achieve that result did not mean his Sixth Amendment rights were violated; despite being selected in an irregular manner, the jury was a legal jury with the authority to render a verdict against defendant. Carr v. State, 190 So. 3d 1, 2015 Miss. App. LEXIS 605 (Miss. Ct. App. 2015).

**81. – – Capital punishment, impartial jury.**

Leave was given to file a petition for post-conviction relief because petitioner made a substantial showing of a denial of his constitutional right to an impartial

jury to entitle him to a hearing where bailiffs reportedly commented to jurors regarding the reason that all of the jury members were white. The bailiffs reportedly stated that blacks were not comfortable with the death penalty. Batiste v. State, 184 So. 3d 290, 2016 Miss. LEXIS 27 (Miss. 2016).

**89. Nature and cause of accusation – In general.**

**93. – – Specificity, nature and cause of accusation.**

Indictment sufficiently identifying robbery under as the underlying offense and listing its statutory section is all that is required to charge capital murder premised on robbery; because petitioner's indictment identified the underlying felony as robbery and listed the statutory section under which he was charged, the capital murder charge was sufficiently pleaded and the indictment was not defective. Randall v. State, 148 So. 3d 686, 2014 Miss. App. LEXIS 575 (Miss. Ct. App. 2014).

**94. – – Amendment of indictment or information, nature and cause of accusation.**

Trial court properly amended the State's motion to amend the indictment to strike items identified as having been stolen and to change the description of other items because the deleted items were mere surplusage; the removal of the items did not change the substance of the offense, defendant was afforded a fair opportunity to defend herself and was not unfairly surprised, the amendment clarified and narrowed the essential facts, and the deletion of the items did not eliminate any defense. Nations v. State, 199 So. 3d 1265, 2016 Miss. App. LEXIS 538 (Miss. Ct. App. 2016).

**95. – – Included lesser offenses, nature and cause of accusation.**

In a murder case, defendant was on statutory notice that the jury could convict him of any lesser-included offense, even if the lesser-included offense was not listed in a separate count of the indictment. Thompson v. State, 269 So. 3d 301, 2018 Miss. App. LEXIS 175 (Miss. Ct. App. 2018).

**96. – – Sufficiency, nature and cause of accusation.**

Because the indictment tracked the language of the manslaughter statute and the maltreatment statute, it was sufficient to put defendant on notice of the charges against her; the indictment's use of the common term "misdemeanor manslaughter" did not render it defective, and the indictment specifically identified not only the underlying misdemeanor (maltreatment) but also the type of maltreatment (failure to provide sufficient medical attention). Brannan v. State, — So. 3d —, 2020 Miss. App. LEXIS 593 (Miss. Ct. App. Oct. 20, 2020).

Defendant's challenge to her indictment was procedurally barred because defendant failed to raise the issue in the circuit court; the indictment clearly alleged both of the essential elements of the aggravated driving while under the influence statute, and thus, the alleged defect was not "jurisdictional" in nature. Dartez v. State, 271 So. 3d 733, 2018 Miss. App. LEXIS 636 (Miss. Ct. App. 2018).

Vacating of defendant's sentence and remand for resentencing was appropriate because defendant was improperly sentenced under a subsection not properly charged in the indictment. Defendant was not on notice that defendant would be convicted and sentenced for simple assault on emergency medical personnel, an aggravating circumstance, but was on notice that defendant was being tried for simple assault on medical personnel. Hawkins v. State, 255 So. 3d 1264, 2018 Miss. LEXIS 431 (Miss. 2018).

**105. Right to be present at trial–In general.**

**107. – – Waiver, right to be present at trial.**

Trial court did not abuse its discretion in trying defendant in absentia because defendant's absence had been a willful, voluntary, and deliberate attempt to avoid trial as he failed to appear on the date of his scheduled trial after being personally informed of the trial date; and his counsel

and the investigator made multiple unsuccessful efforts to contact defendant. Wilson v. State, 267 So. 3d 264, 2019 Miss. LEXIS 152 (Miss. 2019).

Circuit court did not abuse its discretion in finding defendant willfully, voluntarily and deliberately absented himself from the trial and proceeding to trial in his absence. Although defendant claimed he was prejudiced because he was not present to argue the credibility of the witnesses and their identification of him as one of the perpetrators, defendant's deliberate absence from his trial operated as a waiver of the right to be present. McDonald v. State, 226 So. 3d 626, 2017 Miss. App. LEXIS 554 (Miss. Ct. App. 2017).

It was not plain error to try defendant in absentia because defendant was released on bond and was in default for nonappearance, as defendant knew defendant's trial date, understood defendant had to be there, and did not show defendant's absence was not willful, voluntary, and deliberate. Barksdale v. State, 176 So. 3d 108, 2015 Miss. App. LEXIS 184 (Miss. Ct. App.), cert. denied, 178 So. 3d 333, 2015 Miss. LEXIS 525 (Miss. 2015).

**107. —Waiver, right to be present at trial;**

Trial court did not err in finding that defendant was absent from the trial voluntarily and in trying him in absentia because defendant had actual knowledge of the trial dates and actually appeared in court before ultimately walking out after his request for a continuance was denied; and there was no merit to defendant's claims that his mental condition caused him to miss the trial involuntarily. Moore v. State, 287 So. 3d 189, 2020 Miss. LEXIS 1 (Miss. 2020).

**108. Confrontation of witnesses – In general.**

Admitting a victim's taped forensic interview did not violate defendant's right to confrontation because defendant waived the right by failing to object to admission of the tape. Byers v. State, 157 So. 3d 98, 2014 Miss. App. LEXIS 399 (Miss. Ct. App. 2014), cert. denied, 157 So. 3d 835, 2015 Miss. LEXIS 74 (Miss. 2015).

Defendant's right to confrontation was not denied at defendant's sentencing by the admission of certified copies of defendant's prior indictments and sentencing orders. The documents were created for the administrative purpose of tracking criminal proceedings, and were not created solely for an evidentiary purpose. Small v. State, 141 So. 3d 61, 2014 Miss. App. LEXIS 357 (Miss. Ct. App. 2014).

**113. – – Child witnesses, confrontation of witnesses.**

Admitting a victim's taped forensic interview did not violate defendant's right to confrontation because both participants in the interview were present and available for defendant to cross-examine. Byers v. State, 157 So. 3d 98, 2014 Miss. App. LEXIS 399 (Miss. Ct. App. 2014), cert. denied, 157 So. 3d 835, 2015 Miss. LEXIS 74 (Miss. 2015).

**114. – – Unavailable witnesses, confrontation of witnesses.**

The Confrontation Clause was not violated when the chief medical examiner testified that, although the chief medical examiner did not perform the actual autopsy procedures, the chief medical examiner examined the autopsy reports, along with the photographs and case notes, consulted with the medical examiner who performed the autopsy, reviewed and discussed the report with the medical examiner prior to signing off on the report, and concluded based on a reasonable degree of medical certainty that the victim died from gunshot wounds. Fairley v. State, 251 So. 3d 761, 2018 Miss. App. LEXIS 170 (Miss. Ct. App. 2018).

Admitting a deceased codefendant's statements did not violate defendant's confrontation right because (1) the statements were casual remarks that did not inculpate defendant, and (2) counsel elicited some of the same information. Polk v. State, 205 So. 3d 1157, 2016 Miss. App. LEXIS 258 (Miss. Ct. App.), cert. denied, 205 So. 3d 1087, 2016 Miss. LEXIS 533 (Miss. 2016).

**116. – – Discovery, confrontation of witnesses.**

Defendant's right to call witnesses was not violated when the trial court precluded him from calling a witness who

was not timely disclosed because her testimony would not have added anything material to other testimony on the same issue. Bell v. State, 287 So. 3d 944, 2019 Miss. App. LEXIS 316 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 135 (Miss. 2020).

**117. --Test results and testing equipment, confrontation of witnesses.**

Admitting defendant's blood-alcohol testing through the testimony of a supervisor, rather than the analyst who performed the tests, did not violate defendant's confrontation clause rights because (1) the supervisor was a court-accepted expert in the field of forensic toxicology who was actively involved in the production of the report, had intimate knowledge of the tests performed and the process used to confirm the findings, and reviewed the analyst's work to ensure accurate conclusions, and (2) the supervisor testified the supervisor would have arrived at the same result had the supervisor done the testing. Page v. State, 250 So. 3d 1276, 2018 Miss. App. LEXIS 100 (Miss. Ct. App.), cert. denied, 250 So. 3d 1271, 2018 Miss. LEXIS 363 (Miss. 2018).

Although the trial court should have allowed defendant to cross-examine a witness about mislabeling at the state crime lab, the error was harmless beyond a reasonable doubt. The trial court's failure to allow defense counsel to question the witness about the error in the lab did not prejudice the outcome of the trial. Hutto v. State, 227 So. 3d 963, 2017 Miss. LEXIS 180 (Miss. 2017), cert. denied, — U.S. —, 138 S. Ct. 983, 200 L. Ed. 2d 262, 2018 U.S. LEXIS 1361 (U.S. 2018).

Expert testimony of the technical and administrative reviewer of the primary analyst who tested defendant's blood and urine did not violate defendant's constitutional right to confront witnesses against defendant. The witness was actively involved in the production of the lab report, had intimate knowledge of the tests that were performed and the process that was used to confirm the findings, and reviewed the analyst's work, including the data, to ensure that the conclusions were correct and accurate. Roberts v. State, 229 So. 3d 1060, 2017 Miss. App. LEXIS 610 (Miss. Ct. App. 2017).

Forensic scientist's testimony that a State exhibit contained cocaine did not violate defendant's rights under the Confrontation Clause because the forensic scientist was actively involved in the production of the forensic report and had intimate knowledge of the analyses even though she did not perform the tests; the forensic scientist testified as an expert witness in the field of forensic science, with an emphasis in drug analysis, and served as a technical reviewer for the tests performed. Armstead v. State, 196 So. 3d 913, 2016 Miss. LEXIS 321 (Miss. 2016).

Because the doctor did not create the toxicology report and had no knowledge of the preparation or analysis of the report, his testimony about the toxicology report violated defendant's confrontation right; however, the error was harmless because the doctor's testimony about the victim's toxicology report did not attest to defendant's intent to kill the victim; and his primary testimony about the toxicology report involved the victim's blood-alcohol level, which was not at issue. England v. State, 195 So. 3d 830, 2016 Miss. App. LEXIS 14 (Miss. Ct. App. 2016), cert. dismissed, — So. 3d —, 2017 Miss. LEXIS 112 (Miss. 2017).

Supervisor's testimony about a DNA report did not violate the Confrontation Clause because the supervisor observed a DNA analyst conducting a DNA test and testified about the results, which he verified before he signed the report; based on the supervisor's personal knowledge about the testing process and the DNA report, any questions defendant had about the accuracy of the testing or report could have been put to the supervisor on cross-examination. Carr v. State, 190 So. 3d 1, 2015 Miss. App. LEXIS 605 (Miss. Ct. App. 2015).

Trial court did not err in denying defendant's motion for a directed verdict because defendant's confrontation rights were not violated where, while the drug analyst who testified was not the person who performed testing on the substance at issue, the analyst supervised a scientist who was in training with the crime lab in her testing of the substance, the analyst

signed off on the scientist's report, made all of the decisions based on the data that was collected, and made the ultimate decision to identify the substance. Parker v. State, 192 So. 3d 1045, 2015 Miss. App. LEXIS 570 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 1265, 2016 Miss. LEXIS 247 (Miss. 2016).

Trial court did not violate defendant's rights under the Confrontation Clause because the reviewing analyst's testimony about the lab report was admissible, even though he did not test the pills, because he had intimate knowledge of the testing and was actively involved in the production of the report. He competently discussed the testing performed on the pills, the results of the analysis, and his role. Hingle v. State, 153 So. 3d 659, 2014 Miss. LEXIS 500 (Miss. 2014), cert. denied, — U.S. —, 135 S. Ct. 2388, 192 L. Ed. 2d 173, 2015 U.S. LEXIS 3610 (U.S. 2015).

**118. – – Informants, confrontation of witnesses.**

Because appellant pleaded guilty to the charged offenses, his claim that he was denied the right to confront the confidential informant was procedurally barred. Turner v. State, 262 So. 3d 547, 2018 Miss. App. LEXIS 223 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 800, 2019 Miss. LEXIS 41 (Miss. 2019).

Appellant was not denied the right to confront a confidential informant because not only were his claims made without any supporting evidence, they were all contradictory to his testimony in the record. Turner v. State, 262 So. 3d 547, 2018 Miss. App. LEXIS 223 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 800, 2019 Miss. LEXIS 41 (Miss. 2019).

**120. – – Examination of witnesses generally, confrontation of witnesses.**

Trial court properly denied appellant's motion for post-conviction collateral relief because because his sentence was in not illegal due to the introduction of certified copies of his prior felony convictions; the certification of the documents indicated that the custodian of the records swore that the documents were true and correct copies, not that appellant actually committed any act, and thus, he was not deprived of his right to confrontation. Turner v. State, 262 So. 3d 547, 2018 Miss. App. LEXIS 223 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 800, 2019 Miss. LEXIS 41 (Miss. 2019).

Trial court did not by refusing to allow defendant to recall a lieutenant after the State's case-in-chief because defendant and his counsel were given an opportunity to question the lieutenant during the State's case-in-chief; defense counsel failed to request that the trial court retain the lieutenant or instruct him that he remained under subpoena and could not leave in case defense counsel recalled him. Badger v. State, 269 So. 3d 1197, 2018 Miss. App. LEXIS 408 (Miss. Ct. App. 2018), cert. denied, — So. 3d —, 2019 Miss. LEXIS 171 (Miss. 2019).

Defendant's constitutional right to confront and cross-examine a witness testifying against him was not violated because the coroner's medical-examiner investigator was allowed to testify in place of the state medical examiner as to the autopsy performed and authored by the state medical examiner as the coroner's medical-examiner investigator both personally identified the victim's body at the crime scene and authorized and observed the state medical examiner's autopsy of the body; and she had intimate knowledge of the report offered at trial as she personally observed it taking place. Clark v. State, 233 So. 3d 832, 2017 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 518 (Miss. 2017).

Admitting the testimony of a chief medical examiner who did not perform an autopsy of a victim did not violate defendant's confrontation right because (1) the witness gave the witness's independent opinion and testified as an expert in forensic pathology based on various reports and evidence, and (2) the witness was cross-examined. Polk v. State, 205 So. 3d 1157, 2016 Miss. App. LEXIS 258 (Miss. Ct. App.), cert. denied, 205 So. 3d 1087, 2016 Miss. LEXIS 533 (Miss. 2016).

Doctor who testified about the victim's autopsy did not violate defendant's Confrontation Clause right as the doctor had intimate knowledge of the report and ac-

tively participated in the production of the report because the doctor authored the final autopsy report; and, although he relied on another individual's preliminary autopsy findings, the doctor testified only to his final autopsy report, which contained his own findings and opinions. England v. State, 195 So. 3d 830, 2016 Miss. App. LEXIS 14 (Miss. Ct. App. 2016), cert. dismissed, — So. 3d —, 2017 Miss. LEXIS 112 (Miss. 2017).

**121. – – Impeachment, confrontation of witnesses.**

Trial court erred in excluding evidence of a witness's prior nonadjudicated burglary and armed robbery arrest because it denied defendant the opportunity to fully challenge the witness's credibility, but the error was harmless in light of the other evidence of defendant's guilt. Ambrose v. State, 254 So. 3d 77, 2018 Miss. LEXIS 326 (Miss. 2018), cert. denied, — U.S. —, 139 S. Ct. 1379, 203 L. Ed. 2d 615, 2019 U.S. LEXIS 2169 (U.S. 2019).

Trial court erred in refusing to allow defendant to cross-examine an informant about prior convictions and an arrest because favorable treatment the informant received on prior charges in exchange for his testimony was a material point that affected his credibility as a witness, and was allowable cross-examination under Miss. R. Evid. 616. Anthony v. State, 108 So. 3d 394, 2013 Miss. LEXIS 7 (Miss. 2013).

**122. – – Hearsay evidence, confrontation of witnesses.**

Admission of a detective's testimony was not plain error because the jury was not exposed to inadmissible hearsay, and defendant's rights under the Confrontation Clause were not implicated; the detective's testimony was relevant and related to his decisionmaking in his investigatory process. Smith v. State, 258 So. 3d 292, 2018 Miss. App. LEXIS 343 (Miss. Ct. App. 2018).

**124. Right of accused to be heard.**

Defendant was not denied the right to testify in defendant's own defense because the record did not demonstrate that defendant ever made defendant's desire to testify known to the trial court even after the court told defendant that defendant could, contrary to the advice of counsel. Ferguson v. State, 298 So. 3d 1030, 2019 Miss. App. LEXIS 600 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 311 (Miss. 2020).

**125. Right to counsel – In general.**

Trial court acted within its discretion in denying defendant's motions for a continuance and a new attorney and the motion to withdraw filed by defendant's attorney because defendant affirmatively stated four days before trial that he would like the attorney to represent him; any conflict that existed was the result of defendant's own actions; the attorney adequately represented defendant as she raised appropriate objections and cross-examined the State's witnesses, and repeatedly attacked the validity of the DNA evidence introduced at trial; and defendant was not deprived of due process or a fair trial based on the overwhelming evidence introduced against him. Hill v. State, 269 So. 3d 1, 2018 Miss. LEXIS 364 (Miss. 2018).

Davis v. State (512 U.S. 452, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994)) does not require Mississippi to follow the minimum standard that the federal government has set for itself, and the court is empowered by the state constitution to exceed federal minimum standards of constitutionality and more strictly enforce the right to counsel during custodial interrogations. Downey v. State, 144 So. 3d 146, 2014 Miss. LEXIS 389 (Miss. 2014).

**127. – – Pro se or hybrid representation, right to counsel.**

Trial court did not err by failing to order a mistrial or force defendant to stop representing himself and allow his appointed counsel to take over because counsel did not claim that defendant was mentally incompetent to defend himself or that he did not knowingly or intelligently decide to act pro se. Knight v. State, 281 So. 3d 898, 2019 Miss. App. LEXIS 67 (Miss. Ct. App.), cert. denied, 279 So. 3d 1086, 2019 Miss. LEXIS 413 (Miss. 2019).

Defendant was not forced to proceed pro se without knowingly or voluntarily waiv-

ing his right to an attorney because after being warned of the dangers of self-representation, defendant made it clear that he wished to take the "lead" role in a "co-counsel" arrangement with his court-appointed attorney; defendant was never left to his own defense as a wholly pro se litigant but always had access to counsel. Lofton v. State, 248 So. 3d 798, 2018 Miss. LEXIS 183 (Miss. 2018), cert. denied, — U.S. —, 139 S. Ct. 1569, 203 L. Ed. 2d 731, 2019 U.S. LEXIS 2762 (U.S. 2019).

Defendant was not deprived of the right to represent himself as he knowingly accepted the appointment of defense counsel through hybrid representation because the trial court offered defendant ample opportunity to proceed pro se; the trial court questioned him several times to ensure that he understood that he could either proceed pro se or with the assistance of an attorney; and, while defendant might have previously exhibited a desire to proceed pro se, the record indicated that defendant desired to proceed with his appointed defense counsel. Clark v. State, 233 So. 3d 832, 2017 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 518 (Miss. 2017).

**129. – – Invocation of right to counsel.**

Record supported the finding that defendant was advised of his Miranda rights, knowingly and intelligently waived his rights, and freely and voluntarily confessed to setting fire to the house, and his statement that he needed "help" was insufficient to invoke his right to counsel. Franklin v. State, 170 So. 3d 481, 2015 Miss. LEXIS 364 (Miss. 2015).

**132. – – Conflicts of interest, right to counsel.**

Trial counsel was not ineffective per se due to an actual conflict of interest, as there was no actual conflict of interest but only a personality conflict between counsel and his client. Rowsey v. State, 188 So. 3d 486, 2015 Miss. LEXIS 573 (Miss. 2015).

**136. – – Informants, right to counsel.**

Evidence obtained through two informants was improperly admitted, as the informants were acting as agents for the State when they procured incriminating statements from defendant, who had invoked his right to counsel. Blakeney v. State, 236 So. 3d 11, 2017 Miss. LEXIS 434 (Miss. 2017).

**138. – – Lineups, right to counsel.**

Defendant was properly denied a new trial because he was not entitled to counsel at the lineup, as at the time of the lineup he was under arrest for a parole violation not for capital murder. Defendant's right to counsel for capital murder had not yet attached because the warrant for capital murder had not been issued and proceedings for capital murder charges had not begun. Howell v. State, 163 So. 3d 240, 2014 Miss. LEXIS 496 (Miss. 2014).

**141. – – Waiver, right to counsel.**

Defendant's claim that the trial court allowed him to proceed pro se without providing adequate warnings about the dangers and disadvantages of self-representation was incorrect because the trial judge made defendant aware multiple times that proceeding pro se was unadvisable, that defendant would not receive special treatment, and that defendant had to follow all of the technical rules of substantive law, criminal procedure, and evidence; and defendant knowingly disregarded the judge's admonition with eyes open and proceeded to trial, representing himself. Fairley v. State, 275 So. 3d 1012, 2019 Miss. LEXIS 180 (Miss. 2019), cert. denied, — U.S. —, 140 S. Ct. 1241, 206 L. Ed. 2d 229, 2020 U.S. LEXIS 892 (U.S. 2020).

Defendant did not forfeit his right to counsel by his conduct of disparaging his court-appointed attorney and filing a bar complaint against him, and therefore he was denied his constitutional right to counsel when he was forced to proceed without one, where the record did not reflect that he was warned that he might waive the right to counsel by persisting in a course of conduct as required by Miss. Unif. Cir. & Cty. R. 8.05. McCollum v. State, 186 So. 3d 948, 2016 Miss. App. LEXIS 94 (Miss. Ct. App. 2016).

**142. Ineffectiveness of counsel – In general.**

It was clear from the record that defen-

dant's counsel zealously represented defendant. Thus, defendant's ineffective-assistance-of-counsel claim was without merit. Springer v. State, 187 So. 3d 1050, 2015 Miss. App. LEXIS 589 (Miss. Ct. App. 2015).

**143. - - Waiver of issue, ineffectiveness of counsel.**

Because the record was insufficient to address a Strickland claim, the supreme court denied relief, preserving defendant's right to raise the issue through a post-conviction-relief petition; although defendant alleged that counsel filed subpoenas with an incorrect appearance date, the record did not contain any filed, returned copies of those subpoenas, and it was not apparent why defendant failed to seek a continuance. Lofton v. State, 248 So. 3d 798, 2018 Miss. LEXIS 183 (Miss. 2018), cert. denied, — U.S. —, 139 S. Ct. 1569, 203 L. Ed. 2d 731, 2019 U.S. LEXIS 2762 (U.S. 2019).

**144. - - Factors considered, ineffectiveness of counsel.**

Waiting until a date close to trial to request discovery is not per se deficient performance of counsel. Therefore, in a statutory rape case, ineffective assistance of counsel was not shown where discovery from the State was received a week before trial; even assuming that trial counsel was deficient, defendant failed to explain how his defense was prejudiced by the timing of his counsel's discovery motion since he was not surprised by any of the evidence. Giles v. State, 187 So. 3d 116, 2016 Miss. LEXIS 122 (Miss. 2016).

**149. - - Conduct of trial, ineffectiveness of counsel.**

While trial counsel was deficient for failing to request an accomplice-testimony instruction, as the State used such testimony to identify defendant as the shooter, the deficient performance did not prejudice the defense, as the jury heard testimony from a nonaccomplice witness that defendant admitted his involvement in the robbery and could have deduced from accomplice's testimony that he had an incentive to lie. Carson v. State, 212 So. 3d 22, 2016 Miss. LEXIS 473 (Miss. 2016), cert. denied, — U.S. —, 138 S. Ct. 482, 199 L. Ed. 2d 367, 2017 U.S. LEXIS 7069 (U.S. 2017).

**150. - - Examination of witnesses, ineffectiveness of counsel.**

In a statutory rape case, counsel was deficient in failing to notify the State about the witnesses he planned to call, but because defendant made no proffer of witness testimony, it was impossible for an appellate court to know, without engaging in wild speculation, whether this omission had any impact on the outcome of the trial. The claim was dismissed without prejudice to the ability to raise it in appropriate post-conviction proceedings. Giles v. State, 187 So. 3d 116, 2016 Miss. LEXIS 122 (Miss. 2016).

**151. - - Objection to admission or suppression of evidence, ineffectiveness of counsel.**

Defendant did not show that trial counsel rendered ineffective assistance of counsel by failing to object to the admission of his confession and to present an accomplice's testimony because the trial court could have relied on or rejected the accomplice's testimony; because officers testified that neither defendant nor the accomplice had asked for an attorney at any time, their testimony supported the trial court's finding that defendant's rights waiver was knowing, intelligent, and voluntary. Pace v. State, 242 So. 3d 107, 2018 Miss. LEXIS 199 (Miss. 2018).

In a murder case, even if a statement was hearsay and should have been excluded, it was not probable that the outcome would have been different because of the overwhelming evidence of defendant's guilt. Therefore, ineffective assistance of counsel was not shown. Hall v. State, — So. 3d —, 2016 Miss. LEXIS 125 (Miss. Mar. 17, 2016).

In a statutory rape case, counsel was not deficient in failing to seek suppression of a statement that defendant made to police based on relevance grounds; even though the statement did not include the name of the person defendant had sexual relations with or the date of the encounter, it was highly probative of his guilt. At the time the statement was made, defendant

was being questioned about his encounter with the victim, and his statement was corroborative of the statement the victim made. Giles v. State, 187 So. 3d 116, 2016 Miss. LEXIS 122 (Miss. 2016).

**152. – – Objection to jury instructions, ineffectiveness of counsel.**

Counsel was not ineffective for failing to submit a spoilation instruction regarding the lost recording of his interview with the Drug Enforcement Agency because no evidence was presented at trial that the audio recording of defendant's interview was purposefully taped over or erased in bad faith; and, therefore, defendant was not entitled to a spoilation instruction. Fairley v. State, 275 So. 3d 1012, 2019 Miss. LEXIS 180 (Miss. 2019), cert. denied, — U.S. —, 140 S. Ct. 1241, 206 L. Ed. 2d 229, 2020 U.S. LEXIS 892 (U.S. 2020).

**159. – – Different result or trial outcome, ineffectiveness of counsel.**

Although defendant's trial counsel was deficient in moving ore tenus for judgment notwithstanding the verdict, but not making a post-trial motion for a new trial, defendant was not prejudiced by that omission because the verdicts were not contrary to the overwhelming weight of the evidence in that the victims identified defendant as the perpetrator of armed robbery and kidnaping and defendant admitted that defendant was near the crime scene at the time of the incident. Ivory v. State, 283 So. 3d 108, 2019 Miss. LEXIS 336 (Miss. 2019).

**161. – – Burden of proof, ineffectiveness of counsel.**

Defense counsel's performance was deficient on the issue of competency at the conviction phase because, after a mental evaluation of defendant was requested and ordered, counsel, given defendant's vast history of mental health issues, should have requested a competency hearing. However, defendant failed to present any evidence that defendant suffered prejudice as a result of counsel's failures on the issue of competency. Goodin v. State, 102 So. 3d 1102, 2012 Miss. LEXIS 616 (Miss. 2012).

**162. – – Post-conviction remedies, ineffectiveness of counsel.**

Defendant was entitled to a new trial because counsel provided ineffective assistance by failing to so move as (1) there was no strategic reason for failing to so move, and (2) it was reasonably probable the motion would have been granted, since defendant had a right to be where defendant was, the victim was an immediate aggressor by forcibly entering a dwelling, and defendant engaged in no unlawful activity, so defendant had no duty to retreat. Woods v. State, 242 So. 3d 47, 2018 Miss. LEXIS 85 (Miss. 2018).

Defendant did not show that trial counsel's failure to file post-trial motions violated his constitutional right to the effective assistance of counsel because no reasonable probability existed that the trial court would have granted his motion for judgment notwithstanding the verdict; defendant confessed to his involvement in the crimes, and the victim's testimony established that, while defendant did not commit the acts himself, he accompanied and encouraged others. Pace v. State, 242 So. 3d 107, 2018 Miss. LEXIS 199 (Miss. 2018).

In a statutory rape case, ineffective assistance claims based on failure to investigate, failure to reciprocate discovery, and failure to identify and call additional alibi witnesses, and the question of whether defendant was prejudiced by the totality of counsel's performance were not based on facts fully apparent from the record. The arguments could have been made in a petition for postconviction relief. Giles v. State, 187 So. 3d 116, 2016 Miss. LEXIS 122 (Miss. 2016).

**164. Abatement ab initio.**

Deceased defendant's appeal of a criminal conviction was dismissed because the abatement ab initio doctrine was rejected, as (1) the defendant's victim had the right to be treated with dignity, fairness, and respect, (2) the defendant's rights had been observed, and (3) the defendant's estate or personal representative did not seek to be substituted. Payton v. State,

266 So. 3d 630, 2019 Miss. LEXIS 123 (Miss. 2019).

### RESEARCH REFERENCES

**ALR.**

Necessity or Propriety of Court's Provision of Cocounsel to Criminal Defendant Who Is Already Represented by Counsel – State Prosecutions. 83 A.L.R.6th 465.

Fifth Amendment Privilege Against Self-Incrimination as Applied to Compelled Disclosure of Password or Production of Otherwise Encrypted Electronically Stored Data. 84 A.L.R.6th 251.

## § 26A. Victims' rights; construction of provisions; legislative authority.

### JUDICIAL DECISIONS

**2. Abatement ab initio.**

Deceased defendant's appeal of a criminal conviction was dismissed because the abatement ab initio doctrine was rejected, as (1) the defendant's victim had the right to be treated with dignity, fairness, and respect, (2) the defendant's rights had been observed, and (3) the defendant's estate or personal representative did not seek to be substituted. Payton v. State, 266 So. 3d 630, 2019 Miss. LEXIS 123 (Miss. 2019).

## § 27. Proceeding by indictment or information.

### JUDICIAL DECISIONS

#### ANALYSIS

3. Necessity for indictment.
4. Sufficiency of indictment.
8. Waiver of indictment.

**3. Necessity for indictment.**

Defendant's purported conviction for robbery was plain error because he had been indicted for burglary, not the entirely distinct crime of robbery, which was not a lesser-included offense of burglary, and a court could not make, alter, or substantively amend a felony indictment; defendant's conviction for robbery was a plain, clear, and obvious error that violated his fundamental rights and constituted a manifest miscarriage of justice. Pace v. State, 242 So. 3d 107, 2018 Miss. LEXIS 199 (Miss. 2018).

**4. Sufficiency of indictment.**

Vacating of defendant's sentence and remand for resentencing was appropriate because defendant was improperly sentenced under a subsection not properly charged in the indictment. Defendant was not on notice that defendant would be convicted and sentenced for simple assault on emergency medical personnel, an aggravating circumstance, but was on notice that defendant was being tried for simple assault on medical personnel. Hawkins v. State, 255 So. 3d 1264, 2018 Miss. LEXIS 431 (Miss. 2018).

**8. Waiver of indictment.**

Circuit court properly denied petitioner's motion for post-conviction relief because it was within its discretion to find that there had been a bill of information based on petitioner's waiver of indictment, guilty-plea petition, and comments during the guilty-plea hearing; the failure to file the bill of information appeared to be the result of oversight, and when petitioner pleaded guilty he clearly proceeded as though a bill of information existed at the time. Ashwell v. State, 225 So. 3d 1258, 2016 Miss. App. LEXIS 372 (Miss. Ct. App. 2016), rev'd, vacated, 226 So. 3d 69, 2017 Miss. LEXIS 341 (Miss. 2017).

Circuit court properly denied petitioner's motion for post-conviction relief be-

cause it was within the circuit court's discretion to find that a bill of information for escape existed based on statements in the waiver of indictment, the guilty-plea petition, and the transcript of the guilty-plea hearing. Ashwell v. State, 225 So. 3d 1258, 2016 Miss. App. LEXIS 372 (Miss. Ct. App. 2016), rev'd, vacated, 226 So. 3d 69, 2017 Miss. LEXIS 341 (Miss. 2017).

## § 28. Cruel or unusual punishment prohibited.

### JUDICIAL DECISIONS

#### ANALYSIS

4. Youthful offenders.
9. Sentence within statutory parameters.
12. Disproportionate forfeiture.
14. Capital sentencing procedure.
16. Excessive fines.

**4. Youthful offenders.**

Circuit judge did not abuse his discretion or otherwise err in declining to declare defendant parole eligible, when a sentence of life without the possibility of parole was imposed upon defendant after defendant pleaded guilty to the crime of capital murder as a juvenile, because the judge discussed and applied the correct factors outlined in the case law. Furthermore, the sentence was not unconstitutional as a defendant convicted of capital murder did not have an absolute constitutional right to be considered for parole. Cook v. State, 242 So. 3d 865, 2017 Miss. App. LEXIS 448 (Miss. Ct. App. 2017), cert. denied, 237 So. 3d 1269, 2018 Miss. LEXIS 139 (Miss. 2018), cert. denied, — U.S. —, 139 S. Ct. 787, 202 L. Ed. 2d 568, 2019 U.S. LEXIS 181 (U.S. 2019).

In a capital murder case, defendant, who was 17 years and eight months old when he committed the offense, was not entitled to relief under Miller and his sentence of life imprisonment without the possibility of parole was proper because his crime did not reflect youthful impetuosity or a failure to appreciate the consequences as he and another individual planned in advance to kill his father, and take his car and his money; defendant was an enthusiastic participant, if not the mastermind, of his father's execution; and a clinical psychologist could not say with any degree of certainty that defendant could be rehabilitated. Martin v. State, — So. 3d —, 2020 Miss. App. LEXIS 49 (Miss. Ct. App. Feb. 18, 2020).

In a capital murder case in which defendant, who was 17 years and eight months old when he committed the offense, filed a motion for post-conviction relief in which he sought to be resentenced to a term of life imprisonment with eligibility for parole based on Miller, defendant's request for a jury was properly denied because his conviction and sentence were already final when Miller was decided; and he was afforded an opportunity to show that he was entitled to post-conviction relief under Miller in the form of a full evidentiary hearing. Martin v. State, — So. 3d —, 2020 Miss. App. LEXIS 49 (Miss. Ct. App. Feb. 18, 2020).

Trial court did not err by resentencing defendant to life in prison without parole for each of defendant's convictions of capitol murder committed when defendant was a juvenile because defendant was not constitutionally precluded from being sentenced to life without parole; defendant had no right to a jury for the resentencing hearing; and the judge based its conclusion that defendant was irreparably corrupt on the heinousness of the crime, the expert testimony regarding defendant's maturity and rehabilitation, and defendant's lack of remorse. McGilberry v. State, 292 So. 3d 199, 2020 Miss. LEXIS 10 (Miss. 2020).

**9. Sentence within statutory parameters.**

Statutory sentencing provision under Miss. Code Ann. § 41-29-139(f) did not constitute cruel and unusual punishment as applied to defendant because defendant was sentenced to twenty years, well within the statutory guidelines under § 41-29-139 (f)(1), which allowed for imprisonment for a term of not less than ten

years nor more than forty years. 2020 Miss. App. LEXIS 349.

**12. Disproportionate forfeiture.**

Circuit court erred when it found that a truck had been forfeited, when defendant and a codefendant had cocaine in their possession while they were traveling in the truck, because the forfeiture of the truck was an excessive and grossly disproportionate fine for the non-adjudicated offense of conspiracy to possess cocaine, as neither the instrumentality test, nor the proportionality test favored forfeiture. One (1) 2011 Chevrolet Silverado 1500 v. Panola County Narcotics Task Force, 169 So. 3d 967, 2014 Miss. App. LEXIS 682 (Miss. Ct. App. 2014), cert. denied, 168 So. 3d 962, 2015 Miss. LEXIS 370 (Miss. 2015).

**14. Capital sentencing procedure.**

Petitioner's punishment did not violate the Mississippi Constitution because his death sentence was not itself unusual; petitioner would be subjected to the same punishment as every other inmate who had been executed. Jordan v. State, 224 So. 3d 1252, 2017 Miss. LEXIS 245 (Miss. 2017), cert. denied, — U.S. —, 138 S. Ct. 2567, 201 L. Ed. 2d 1104, 2018 U.S. LEXIS 4033 (U.S. 2018).

**16. Excessive fines.**

Record contained sufficient evidence to show that a driver's seized property facilitated a violation of the Mississippi Uniform Controlled Substances Law because the State presented evidence that the seized property constituted instrumentalities used in the furtherance of a drug-trafficking operation and that the vehicle played a role in the furtherance of drug trafficking; the forfeiture of the driver's property failed to result in a fine that was grossly disproportionate to his culpability. Bobo v. State ex rel. Pelahatchie Police Dep't (In re $137,325.00 in U.S. Currency), 204 So. 3d 317, 2016 Miss. App. LEXIS 746 (Miss. Ct. App. 2016).

### RESEARCH REFERENCES

**ALR.**

Construction and Application of Eighth Amendment's Prohibition of Cruel and Unusual Punishment – U.S. Supreme Court Cases. 78 A.L.R. Fed. 2d 1.

## § 29. Excessive bail prohibited; revocation or denial of bail.

**Editor's Note —** The 1987 amendment of Section 29 in Article 3 of the Mississippi Constitution of 1890 was proposed by Laws, 1987, Ch. 684 (Senate Concurrent Resolution No. 534), and upon ratification by the electorate on November 3, 1987, was inserted as part of the Constitution by proclamation of the Secretary of State on December 4, 1987.

The above History information and Editor's note are being set out to correct an error in a reference to the 1987 Chapter number.

## § 31. Trial by jury.

### JUDICIAL DECISIONS

#### ANALYSIS

1. Construction and application.
5. Right of trial by jury generally.
6. Directed verdict or summary judgment.
12. Impairment of rights.

**1. Construction and application.**

Trial court erred by compelling a commercial landlord to arbitrate its claims against a tenant and credit-card processing companies because the landlord had not made a contract claim against any of the credit-card processing companies, but

rather, it alleged tort claims; the landlord was not bound to the terms of the tenant's contracts, including the arbitration provisions. LAGB, LLC v. Total Merch. Servs., 284 So. 3d 720, 2019 Miss. LEXIS 346 (Miss. 2019).

**5. Right of trial by jury generally.**

Foundation of the right to a jury trial is that the common law to which the Mississippi Constitution applies is the common law of the State as it existed when that Constitution was adopted, as opposed to the common law as it existed when Mississippi's first Constitution was created in 1817; the courts of the State have rejected such a static view of the common law, as such a dogmatic approach ignores its evolving nature. Riverboat Corp. v. Harrison Cnty. Bd. of Supervisors, 198 So. 3d 289, 2016 Miss. LEXIS 291 (Miss. 2016).

Jury represents the community's conscience and common sense, qualities not always exhibited by the government, and nothing gives the citizenry more direct participation in the running of their own government than voting and jury service; jury trials were so important to the founders that they are guaranteed in the Sixth and Seventh Amendments. Riverboat Corp. v. Harrison Cnty. Bd. of Supervisors, 198 So. 3d 289, 2016 Miss. LEXIS 291 (Miss. 2016).

Cases in which the statute creating the cause of action was silent regarding jury trial have been tried before juries for parts of three centuries. That continued custom and practice is the common law, and it was an inviolate right prior to the adoption of our 1890 Constitution; therefore, the right to a jury trial exists in tax-assessment appeals to circuit court. Riverboat Corp. v. Harrison Cnty. Bd. of Supervisors, 198 So. 3d 289, 2016 Miss. LEXIS 291 (Miss. 2016).

**6. Directed verdict or summary judgment.**

Trial judge did not violate the homeowners' right to a jury trial where the court had already ruled that their negligence and related claims failed for lack of causation and that the propane gas dealer was entitled to judgment as a matter of law. Elliott v. AmeriGas Propane, L.P., 249 So. 3d 389, 2018 Miss. LEXIS 325 (Miss. 2018).

**12. Impairment of rights.**

Contractor was entitled to compel a homeowner's adult child to arbitrate the child's intentional or negligent infliction of emotional distress claims against the contractor, pursuant to an arbitration provision within a contract between the homeowner and the contractor for the repair of the owner's home, because the child, who lived in the home, was neither a nonsignatory to the contract, nor a third-party beneficiary to the contract, and was not bound by direct-benefit estoppel. Olshan Found. Repair Co. of Jackson, LLC v. Moore, 251 So. 3d 725, 2018 Miss. LEXIS 299 (Miss. 2018).

## § 32. Construction of enumerated rights.

### RESEARCH REFERENCES

**ALR.**

Class-of-One Equal Protection Claims Based upon Law Enforcement Actions. 86 A.L.R.6th 173.

# ARTICLE 4.
# LEGISLATIVE DEPARTMENT.
# IN GENERAL

## § 38. Election of officers by each house.

### JUDICIAL DECISIONS

**3. Primary elections.**

When Miss. Const. art. 4, § 38 and Miss. Const. art. 12, § 247 are read together, the Constitution vests the Legislature with exclusive jurisdiction to hear legislative election contests following general (or special) elections, but that jurisdiction does not extend to primary election contests; in exercising the mandate of § 247 to enact laws to secure fairness in party primaries, the Legislature granted the judiciary jurisdiction to hear all primary election contests. Dillon v. Myers, 227 So. 3d 923, 2017 Miss. LEXIS 134 (Miss. 2017).

If a contestant is dissatisfied with the timeliness or final decision of the executive committee, the Legislature endows the judicial branch with full jurisdiction to review all primary election contests. Dillon v. Myers, 227 So. 3d 923, 2017 Miss. LEXIS 134 (Miss. 2017).

Legislature has exclusive jurisdiction to hear election contests involving a seat in the Legislature following a general or special election; however, the jurisdiction bestowed on the Legislature does not apply to a primary election for a legislative office, for the Constitution requires the Legislature to enact laws to secure fairness in primary elections, and under that mandate, the Legislature first grants the parties' executive committees jurisdiction to resolve primary election contests. Dillon v. Myers, 227 So. 3d 923, 2017 Miss. LEXIS 134 (Miss. 2017).

# QUALIFICATIONS AND PRIVILEGES OF LEGISLATORS

## § 42. Qualifications of senators.

### JUDICIAL DECISIONS

**1. In general.**

Circuit court did not commit manifest error in determining that a state senate candidate changed his domicile from Benton County to Marshall County. The candidate had provided absolute proof, subject to no contingencies, that he would meet the qualifications on or before the date of the general or special election at which he could be elected. Hale v. State Democratic Exec. Comm., 168 So. 3d 946, 2015 Miss. LEXIS 376 (Miss. 2015).

# RULES OF PROCEDURE

## § 59. Introduction and passage of bills.

### JUDICIAL DECISIONS

**1. In general.**

Text of the Mississippi Constitution that imposes upon the Legislature the obligation to read bills upon a member's request, necessarily commits upon the Legislature the obligation to determine

how that requirement will be carried out. Gunn v. Hughes, 210 So. 3d 969, 2017 Miss. LEXIS 54 (Miss. 2017).

Petition of a member of the Legislature raised an issue the judiciary lacked authority to adjudicate because the constitutional authority, and duty, to decide whether the speaker of the house violated the constitutional provision requiring bills to be read upon a member's request was squarely within the power of the legislative branch; by requesting the courts to force the speaker to read bills in a particular manner, the member sought to involve the judiciary in legislative procedural matters. Gunn v. Hughes, 210 So. 3d 969, 2017 Miss. LEXIS 54 (Miss. 2017).

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## § 63. Maximum sum fixed in appropriation bill.

### JUDICIAL DECISIONS

**1. In general.**

Statute which allowed the Executive Branch to make appropriations decisions was constitutional, as it did not violate the doctrine of separation of powers, because budget reductions imposed on state agencies by the Governor of the State of Mississippi pursuant to the statute were an exercise of the Executive's constitutional power to control the budget. Clark v. Bryant, 253 So. 3d 297, 2018 Miss. LEXIS 385 (Miss. 2018).

## § 66. Law granting donation or gratuity.

### JUDICIAL DECISIONS

### ANALYSIS

1. In general.
4. City councils.
5. Counties.

**1. In general.**

Constitutional provision was inapplicable in a breach of contract action between a state agency and a vendor when the state agency directly paid the invoices which the vendor submitted to the media vendors that provided the invoices to the vendor because the trial court's holding did not result in a donation but in payment for services rendered. Mann Agency, LLC v. Miss. Dep't of Pub. Safety, — So. 3d —, 2020 Miss. LEXIS 342 (Miss. Sept. 24, 2020).

**4. City councils.**

In an election contest filed by a mayor's opponent, a city council's resolution authorizing the city to hire counsel was not an illegal donation of city funds to the mayor because the resolution only authorized the city to employ counsel to represent the city's interests. McAdams v. Perkins, 204 So. 3d 1257, 2016 Miss. LEXIS 506 (Miss. 2016).

**5. Counties.**

County did not show 2004 Miss. Private and Local Laws ch. 920, requiring the county to distribute portions of a gaming fee to a town and a school district, was unconstitutional because (1) the county did not argue distributions required by the law were for a sectarian purpose, and

(2) the voting requirement of Miss. Const. art. 4, § 66 was not justiciable. Tunica County v. Town of Tunica, 227 So. 3d 1007, 2017 Miss. LEXIS 179 (Miss. 2017).

## § 72. Approval or disapproval of bill by Governor; veto override process.

### JUDICIAL DECISIONS

**1. In general.**

School districts were not entitled to the difference between what they received and what they claimed they should have received had the Legislature fully funded the Mississippi Adequate Education Program (MAEP) because the statute was not mandatory since it did not obligate the Governor to sign a bill fully funding MAEP; with full knowledge of the constitutional legislative process, the legislature failed in the statute to address the Governor's role. Clarksdale Mun. Sch. Dist. v. State, 233 So. 3d 299, 2017 Miss. LEXIS 423 (Miss. 2017).

### RESEARCH REFERENCES

**ALR.**

Disapproval by Governor of Bill in Part or Approval with Modifications. 87 A.L.R.6th 633.

## § 73. Veto of parts of appropriations bill.

### RESEARCH REFERENCES

**ALR.**

Disapproval by Governor of Bill in Part or Approval with Modifications. 87 A.L.R.6th 633.

# LOCAL LEGISLATION

## § 87. Special or local laws.

### JUDICIAL DECISIONS

**7. Laws suspending general laws–In general.**

County did not show 2004 Miss. Private and Local Laws ch. 920, requiring the county to distribute portions of a gaming fee to a town and a school district, was unconstitutional because (1) Miss. Const. art. 4, § 87 did not apply as it related to the suspension of general laws, since the law applied to specific governmental entities for specific purposes, and, (2) if Miss. Const. art. 4, § 87 applied, the law did not suspend the operation of the general statutes of Miss. Code Ann. §§ 19-3-40(3)(f) or 75-76-195, as a law authorized the distributions and 2004 Miss. Private and Local Laws ch. 920 and Miss. Code Ann. § 75-76-195 were separate statutes authorizing the imposition of a fee. Tunica County v. Town of Tunica, 227 So. 3d 1007, 2017 Miss. LEXIS 179 (Miss. 2017).

## § 89. Standing committee for local and private legislation in each house.

### JUDICIAL DECISIONS

**1. In general.**

County did not show 2004 Miss. Private and Local Laws ch. 920, requiring the county to distribute portions of a gaming fee to a town and a school district, was unconstitutional because whether the law was enacted pursuant to the requirements of Miss. Const. art. 4, § 89 was not reviewable. Tunica County v. Town of Tunica, 227 So. 3d 1007, 2017 Miss. LEXIS 179 (Miss. 2017).

## § 90. Matters provided for by general laws only.

### JUDICIAL DECISIONS

**2. Specific prohibitions–In general.**

**12. — Management and support of schools, etc., specific prohibitions.**

County did not show 2004 Miss. Private and Local Laws ch. 920, requiring the county to distribute portions of a gaming fee to a town and a school district, was unconstitutional because the county did not show beyond a reasonable doubt that the provision violated Miss. Const. art. 4, § 90(p). Tunica County v. Town of Tunica, 227 So. 3d 1007, 2017 Miss. LEXIS 179 (Miss. 2017).

# PROHIBITIONS

## § 95. Donation or sale of state lands; railroad easements.

### JUDICIAL DECISIONS

**1. Donation of public trust lands–In general.**

Chancery court did not err by denying a lessee's motion for a declaratory judgment that a school board was precluded from adjusting rent based on the time restrictions in a lease for Sixteenth Section Land because the time restriction ran contrary to the statutory requirement that rent could be adjusted not less than once every ten years. Oak Grove Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

**8. — Adequacy of consideration, donation of public trust lands.**

Mandatory rent adjustment is tied to the statutory duty imposed on a school board as trustee to assure adequate compensation is received for Marketplace's use of Sixteenth Section Land and the constitutional prohibition against the board's essentially donating trust land by virtue of receiving grossly inadequate consideration; because rent adjustment is part of the board's duty as trustee of Sixteenth Section Land, this duty cannot be contracted away, even by mutual agreement of the parties. Oak Grove Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

Chancery court did not err by denying a lessee's motion for a declaratory judgment that a school board was precluded from adjusting rent based on the time restrictions in a lease because by adjusting the rent, the board was not making an untimely attempt to exercise a right conferred in the lease; rather, the board was carrying out a statutory mandate and, in the process, trying to ensure the annual rent, based on current fair-market value, was constitutionally adequate. Oak Grove

Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

School board's duty as trustee to assure adequate consideration is received based on current fair market value of the Sixteenth Section Land cannot be waived, even by mutual agreement in a contract; Sixteenth Section leases come with certain constitutional and statutory requirements, one being that rent adjustment at least once every ten years is a mutual, mandatory obligation and not a mere right to be exercised or waived. Oak Grove Marketplace, LLC v. Lamar Cty. Sch. Dist., 287 So. 3d 924, 2020 Miss. LEXIS 6 (Miss. 2020).

## § 96. Extra compensation and unauthorized payments prohibited.

### JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Governmental agencies and officers subject to constitutional prohibition–In general.

**1. In general.**

Constitutional provision was inapplicable in a breach of contract action between a state agency and a vendor when the state agency directly paid the invoices which the vendor submitted to the media vendors that provided the invoices to the vendor because the extinguishment of the state agency's claim fulfilled the contract between the parties and was not considered extra compensation. Mann Agency, LLC v. Miss. Dep't of Pub. Safety, — So. 3d —, 2020 Miss. LEXIS 342 (Miss. Sept. 24, 2020).

**2. Governmental agencies and officers subject to constitutional prohibition–In general.**

County did not show 2004 Miss. Private and Local Laws ch. 920, requiring the county to distribute portions of a gaming fee to a town and a school district, was unconstitutional because Miss. Const. art. 4, § 96 could not reasonably be interpreted to support the county's argument that the distributions required were unauthorized payments. Tunica County v. Town of Tunica, 227 So. 3d 1007, 2017 Miss. LEXIS 179 (Miss. 2017).

# MISCELLANEOUS

## § 104. Statutes of limitation not to run against State and political subdivisions.

### JUDICIAL DECISIONS

**1. Limitations–In general.**

**4. — Adverse possession, limitations.**

Property owners' adverse possession claim failed because the owners were bound by the doctrine of collateral estoppel to the determination in a prior lawsuit that the subject property was a public road and that the county board of supervisors had not abandoned it. Furthermore, after the board of supervisors subsequently abandoned the road, less than the required 10 years ran before the owners brought their adverse possession claim. Smith v. Sims, 281 So. 3d 1069, 2019 Miss. App. LEXIS 234 (Miss. Ct. App. 2019).

## § 110. Rights of way for private roads.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
1.5. Constitutionality.

**1. In general.**

Special court of eminent domain erred in denying an owner's request for attorney's fees and expenses because the neighbors clearly invoked the statutory procedures of the special court of eminent domain when they petitioned to condemn the owner's property for a private road and the state constitution clearly prohibited the Legislature from creating the statutory right to condemn for a private road property within an incorporated city or town. High v. Kuhn, 240 So. 3d 1198, 2017 Miss. LEXIS 455 (Miss. 2017).

Special court of eminent domain erred as a matter of law when it granted a petition for private road access because the Mississippi Constitution provided that such rights of way were not permissible in incorporated cities and towns. The right to seek dismissal under the Mississippi Constitution was not waived because the statutory grounds for such were not satisfied where a private road was requested, rather than a public taking; moreover, public necessity or public use did not have to be shown. High v. Kuhn, 191 So. 3d 113, 2016 Miss. LEXIS 121 (Miss. 2016).

**1.5. Constitutionality.**

Mississippi Constitution provision providing that rights of way were not permissible in incorporated cities and towns was not unconstitutional under the Equal Protection Clause of the United States Constitution because there was a rational basis for this provision; unincorporated areas had few public roads, incorporated towns and cities had ordinances that required properties to abut these public roads, and cities or towns had the prerogative to mandate the minimum-access requirements necessary to protect the welfare of its citizens. Moreover, there were other remedies available. High v. Kuhn, 191 So. 3d 113, 2016 Miss. LEXIS 121 (Miss. 2016).

## § 112. Equal taxation; property tax assessments.

### JUDICIAL DECISIONS

#### ANALYSIS

7. Valuation of property.
9. Assessments–In general.

**7. Valuation of property.**

Circuit court erred in its assessment of a taxpayer's student-housing complex property because the court erroneously adopted the county's true value determination of the property when the income capitalization approach was the best approach for the property as the valuation included the student-housing complex's individual property characteristics and actual income in ascertaining the true value of the property. TNHYIF REIV GOLF, LLC v. Forrest Cty., 275 So. 3d 92, 2018 Miss. App. LEXIS 556 (Miss. Ct. App. 2018).

**9. Assessments–In general.**

Since the developer's discount would violate the constitution, a county determination that it could not apply the regulation to property owners could not be "arbitrary and capricious" because the county board of supervisors could not have granted the taxpayer's request for the discount lawfully; the taxpayer reasonably could not contend that its application was unfair when it could have applied for its benefit previously when it was "applied to everyone." G4, LLC v. Pearl River Cty. Bd. of Supervisors, 2020 Miss. LEXIS 32 (February 6, 2020).

# ARTICLE 5.

# EXECUTIVE.

### JUDICIAL DECISIONS

**1. Construction and application.**

Statute which allowed the Executive Branch to make appropriations decisions was constitutional, as it did not violate the doctrine of separation of powers, because budget reductions imposed on state agencies by the Governor of the State of Mississippi pursuant to the statute were an exercise of the Executive's constitutional power to control the budget. Clark v. Bryant, 253 So. 3d 297, 2018 Miss. LEXIS 385 (Miss. 2018).

## § 124. Reprieves and pardons.

### JUDICIAL DECISIONS

**2. Pardon–In general.**

**5. – – Effect of pardon.**

Because there is no statutory basis in Mississippi for an expungement after a criminal defendant receives an executive pardon, the trial court did not err in denying appellant's motion to expunge her criminal record. Hentz v. State, 152 So. 3d 1139, 2014 Miss. LEXIS 591 (Miss. 2014).

# ARTICLE 6.

# JUDICIARY.

## § 144. Judicial power of state.

### JUDICIAL DECISIONS

**4. Encroachment on judicial powers–In general.**

**5. —— Legislative encroachment on judicial powers.**

Court of Appeals erred in affirming the denial of defendant's petition for post-conviction relief because the circuit court lacked jurisdiction and authority to accept his guilty pleas when he never had been charged with a crime, the Legislature did not have power to limit the number of claims that could be pled in a particular pleading, the docket sheet reflected that no criminal information, even assuming one ever existed, was filed with the circuit court, and the criminal files did not include any charging document. Ashwell v. State, 226 So. 3d 69, 2017 Miss. LEXIS 341 (Miss. 2017).

## § 146. Jurisdiction of Supreme Court.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. Jurisdiction.

**1. In general.**

Because defendant's speedy trial claim could not be decided based on the record, or lack thereof, before the supreme court, it declined to address defendant's speedy trial claim on direct appeal. Wells v. State, 160 So. 3d 1136, 2015 Miss. LEXIS 85 (Miss.), overruled in part, Rowsey v. State,

188 So. 3d 486, 2015 Miss. LEXIS 573 (Miss. 2015).

**2. Jurisdiction.**

Because a circuit court's ruling on an inmate's motion to show cause was a final judgment, the inmate's appeal from that final judgment was appealable to supreme court under its constitutional appellate jurisdiction and assignable by the supreme court to the court of appeals. Pryer v. State, 139 So. 3d 713, 2014 Miss. LEXIS 272 (Miss. 2014).

## § 156. Jurisdiction of circuit court.

### JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Original jurisdiction.
3. Appellate jurisdiction.

**1. In general.**

Chancery court properly dismissed for failure to state a claim a prisoner's complaint alleging that a judge violated the Mississippi Public Records Act because the claim was barred by the doctrine of judicial immunity; the supreme court had held that the judge had jurisdiction to rule upon the prisoner's filings, and thus, judicial immunity insulated him from the prisoner's civil action. Pryer v. Gardner, 247 So. 3d 1245, 2018 Miss. LEXIS 217 (Miss. 2018), cert. denied, — U.S. —, 139 S. Ct. 949, 203 L. Ed. 2d 137, 2019 U.S. LEXIS 731 (U.S. 2019).

**2. Original jurisdiction.**

County contended that the owners' suit included a claim for inverse condemnation and thus should have been filed in the special court of eminent domain, but there was no basis to conclude the circuit court lacked subject-matter jurisdiction over this case. Tippah Cty. v. LeRose, 283 So. 3d 149, 2019 Miss. LEXIS 353 (Miss. 2019).

**3. Appellate jurisdiction.**

Court of appeals had jurisdiction to hear co-owners' appeal because the circuit court twice heard motions to amend the bill of exceptions and determined that the bill of exceptions was proper; the city's concerns about the bill of exceptions could affect other issues of the appeal, but they did not affect the jurisdiction of either the trial court or the court of appeals. Butchart v. City of Canton, 296 So. 3d 751, 2020 Miss. App. LEXIS 177 (Miss. Ct. App. 2020).

Because the Supreme Court of Mississippi is unconvinced the Legislature never intended the signature requirement to be a jurisdictional prerequisite, and given the three operating principles for analyzing the signature requirement, the Supreme Court declines to find that the pertinent part of Miss. Code Ann. § 11-51-75 is unconstitutional. City of Jackson v. Allen, 242 So. 3d 8, 2018 Miss. LEXIS 53 (Miss. 2018).

Resolving doubts in favor of the constitutionality of Miss. Code Ann. § 11-51-75 leads to the conclusion, backed by several cases, that the Legislature did not intend the signature requirement to be a constitutional prerequisite. Therefore, it cannot be unconstitutional as such. Further, the Supreme Court of Mississippi clarifies that, although the bill of exceptions itself is a jurisdictional requirement for the circuit court to hear an appeal via § 11-51-75, imperfections in it go to the adequacy of the record to decide the excepted issues rather than the authority of the court to hear the appeal. City of Jackson v. Allen, 242 So. 3d 8, 2018 Miss. LEXIS 53 (Miss. 2018).

## § 157. Exclusive jurisdiction of chancery court; transfer.

### JUDICIAL DECISIONS

**2. Jurisdiction of chancery court.**

Food-stamp case should be transferred to a chancery court because there was no statutory scheme for appeal from the agency decision and the injured party did not have a full, plain, complete, and adequate remedy at law. Perkins v. Miss. Dep't of Human Servs., 145 So. 3d 670, 2014 Miss. LEXIS 420 (Miss. 2014).

## § 159. Jurisdiction of chancery court.

### JUDICIAL DECISIONS

#### ANALYSIS

5. All matters in equity–In general.
6. – – Injunctive relief, all matters in equity.
7. Divorce and alimony.
10. Testamentary and administration matters.

**5. All matters in equity–In general.**

Chancery court properly dismissed, for lack of jurisdiction, an injured customer's bill of discovery regarding her personal injury and premises liability claims against a grocery store because she had an adequate opportunity for discovery in circuit court where the discovery she desired was only incidental to an action at law for which a justiciable claim already has been articulated in her complaint, avoidance of sanctions for a frivolous suit did not provide support for her bill of discovery, and she failed to make a showing that the information sought could not be obtained by other methods. Kuljis v. Winn-Dixie Montgomery, LLC, 214 So. 3d 283, 2017 Miss. LEXIS 120 (Miss. 2017).

Chancery court was correct in dismissing plaintiff's complaint for discovery. This was a negligence claim that should have been brought in the circuit court instead of the chancery court, which is a court of equity. Kuljis v. Winn-Dixie Montgomery, LLC, 214 So. 3d 318, 2016 Miss. App. LEXIS 166 (Miss. Ct. App. 2016), aff'd, 214 So. 3d 283, 2017 Miss. LEXIS 120 (Miss. 2017).

Because pastor's request for a temporary restraining order (TRO) presented a purely ecclesiastical controversy, the chancery court was without jurisdiction to hear it. As such, the chancellor erred when he issued the TRO and when he vacated the church's vote to remove the pastor and ordered a new one. Greater Fairview Missionary Baptist Church v. Hollins, 160 So. 3d 223, 2015 Miss. LEXIS 150 (Miss. 2015).

In a case in which a church voted to remove its pastor, four deacons who were personally served had some authority and were qualified as authorized agents to accept service on behalf of the church. The chancery court had personal jurisdiction over the parties. Greater Fairview Missionary Baptist Church v. Hollins, 160 So. 3d 223, 2015 Miss. LEXIS 150 (Miss. 2015).

**6. – – Injunctive relief, all matters in equity.**

Statute does nothing more than presume that a Mississippi Consumer Protection Act injunction, standing alone, will be filed in county or chancery court, through the Mississippi Constitution, the chancery court's jurisdiction is limited to specific areas, including all matters in equity, and a a result, injunctions must be filed in the chancery court. State v. Walgreen Co., 250 So. 3d 465, 2018 Miss. LEXIS 339 (Miss. 2018).

High school's complaint against the Mississippi High School Activities Association (MHSAA) was not within the chancy court's jurisdiction because its claim for injunctive relief was not predicated upon some legal or equitable claim that would, at some point, proceed to the merits; MHSAA was a private non-profit

organization in which membership was voluntary and thus, was not a state board or administrative agency, and the common-law right of appeal to chancery court was unavailable. Miss. High Sch. Activities Ass'n v. Hattiesburg High Sch., 178 So. 3d 1208, 2015 Miss. LEXIS 520 (Miss. 2015).

**7. Divorce and alimony.**

Cruse v. Cruse, 202 Miss. 497 (1947), Price v. Price, 202 Miss. 268 (1947), Carter v. Carter, 278 So. 2d 394 (Miss. 1973), Miller v. Miller, 323 So. 2d 533 (Miss. 1975), Stark v. Stark, 755 So. 2d 31 (Miss. Ct. App. 1999), Slaughter v. Slaughter, 869 So. 2d 386 (Miss. 2004), and Bush v. Bush, 903 So. 2d 700 (Miss. 2005) are overruled to the extent they hold Miss. Code Ann. § 93-5-11 confers subject-matter jurisdiction on chancery courts; such jurisdiction is conveyed by the constitution. Lewis v. Pagel, 233 So. 3d 740, 2017 Miss. LEXIS 221 (Miss. 2017).

**10. Testamentary and administration matters.**

In a case in which the chancellor found that the decedent's will was revoked by implication, the chancellor had jurisdiction over the testamentary matter because the ex-wife invoked the subject-matter jurisdiction of the chancery court when she sought the admission of the decedent's will to probate; and the decedent was a resident of the county of the chancery court. Chaney v. Chaney (In re Estate of Chaney), 235 So. 3d 120, 2017 Miss. App. LEXIS 278 (Miss. Ct. App. 2017), cert. denied, — So. 3d —, 2018 Miss. LEXIS 45 (Miss. 2018).

## § 160. Additional jurisdiction of chancery court.

### JUDICIAL DECISIONS

**3. Actions to cancel title and remove clouds–In general.**

Circuit court properly transferred a case to a chancery court because the case involved a title dispute over which the chancery court had constitutional and statutory jurisdiction. Barham v. Miss. Power Co., 266 So. 3d 994, 2019 Miss. LEXIS 129 (Miss. 2019).

## § 161. Concurrent jurisdiction of chancery and circuit court.

### JUDICIAL DECISIONS

**1. In general.**

Circuit court properly denied a partnership's motion to transfer a minority interest holder's accounting action to chancery court where although chancery court may have had jurisdiction given that discovery was needed to gain access to the partnership's books, the alleged commingling made the accounts complicated, and there was a fiduciary relationship among the partners, the holder's choice of the circuit court was proper given that some of the requested relief was legal in nature, the holder sought to recover for its own injuries, and only in circuit court could the holder have exercised its right to a jury. KD Hattiesburg 1128, Inc. v. Turtle Creek Crossing, LLC, 237 So. 3d 157, 2018 Miss. LEXIS 64 (Miss. 2018).

## § 162. Transfer to circuit court.

### JUDICIAL DECISIONS

#### ANALYSIS

1. Construction and application.
2. Transfer of causes–In general.

**1. Construction and application.**

There was no error in the chancery court's decision to retain jurisdiction over an equipment rental company's action because the basis of its amended complaint was quantum meruit, and, therefore, the company's claim was equitable in nature; no express contract existed between the company and the general contractor or the subcontractor. M & R Builders, LLC v. Williams Equip. & Supply Co., 281 So. 3d 320, 2019 Miss. App. LEXIS 393 (Miss. Ct. App. 2019).

**2. Transfer of causes–In general.**

Chancery court properly dismissed petitioner's motion for post-conviction relief (PCR) for lack of subject-matter jurisdiction because it could not have transferred the motion without circumventing the Mississippi Department of Corrections; because petitioner's conviction had been affirmed on direct appeal, and petitioner had not fulfilled his obligation to obtain leave from the supreme court to file a PCR motion, the chancery court could not transfer his petition for writ of error coram nobis. Clay v. State, 232 So. 3d 196, 2017 Miss. App. LEXIS 287 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 503 (Miss. 2017), cert. denied, 229 So. 3d 714, 2017 Miss. LEXIS 513 (Miss. 2017).

## § 165. Disqualification of judges.

### JUDICIAL DECISIONS

#### ANALYSIS

2. Grounds of disqualification–In general.
6. – – Affinity or consanguinity, grounds for disqualification.
9. Determination of disqualification–In general.
11. —— Review, determination of disqualification.

**2. Grounds of disqualification–In general.**

**6. – – Affinity or consanguinity, grounds for disqualification.**

Municipal court judge was publicly reprimanded because she committed judicial misconduct and conduct prejudicial to the administration of justice; the judge's failure to recuse herself from a case involving a family member violated constitutional and statutory law. Miss. Comm'n on Judicial Performance v. Clinkscales, 192 So. 3d 997, 2016 Miss. LEXIS 241 (Miss. 2016).

**9. Determination of disqualification–In general.**

**11. —— Review, determination of disqualification.**

Chancellor did not err in denying the father's request for recusal where there was no evidence that the chancellor knew the former wife or was unfamiliar with the essential facts of the case. Young v. O'Beirne, 147 So. 3d 877, 2014 Miss. App. LEXIS 311 (Miss. Ct. App. 2014).

## § 169. Style of process.

### JUDICIAL DECISIONS

#### ANALYSIS

1. Construction and application.
4. Indictment.

**1. Construction and application.**

Representation of a judge as a public official was within the authority of the Attorney General of Mississippi. The trial court did not commit manifest error in finding that no evidence existed in the record to demonstrate either the existence of an actual attorney-client relationship between a conservator and the Attorney General or that a substantial relationship existed between the mishandling of a conservatorship and the Attorney General's defense of the judge, a current public official, in the civil lawsuit brought by the conservator. Newsome v. Shoemake, 234 So. 3d 1215, 2017 Miss. LEXIS 367 (Miss. 2017).

**4. Indictment.**

Petitioner argued for the first time on appeal that the indictment was defective because it did not include the phrase "against the peace and dignity of the state," but in fact his indictment did include that phrase, and even if that phrase had been omitted, he was not entitled to relief; since he entered his guilty pleas voluntarily and knowingly, this issue was waived. Thompson v. State, 285 So. 3d 704, 2019 Miss. App. LEXIS 569 (Miss. Ct. App. 2019).

## § 170. County districts; board of supervisors.

### JUDICIAL DECISIONS

**5. Jurisdiction over roads, ferries, and bridges, generally.**

Circuit court erred in mandating that a county reasonably abate any nuisance because the board had no legal authority to do so, and the owner offered no other methods by which the board could address his concerns of "proper" usage of the road at issue. Seyfarth v. Adams Cty. Bd. of Supervisors, 267 So. 3d 767, 2019 Miss. LEXIS 162 (Miss. 2019).

## § 173. Attorney General.

### JUDICIAL DECISIONS

#### ANALYSIS

1. Powers and duties of attorney general.
2. Office within executive branch.

**1. Powers and duties of attorney general.**

Neither Mississippi's Constitution nor the common law authorizes the Attorney General to usurp or encroach upon the constitutional or the statutory power of the local district attorney in a criminal case where the Attorney General's assistance is not requested by the district attorney, and is in fact opposed by the district attorney. Williams v. State, 184 So. 3d 908, 2014 Miss. LEXIS 599 (Miss. 2014).

Neither the Mississippi Constitution nor any case law authorized judicial orders appointing the Attorney General as special prosecutor to prosecute a murder case against defendant, where the local district attorney, in his discretion, had made the decision not to prosecute. Williams v. State, 184 So. 3d 908, 2014 Miss. LEXIS 599 (Miss. 2014).

**2. Office within executive branch.**

Circuit court was correct in finding that an arrestee's argument that the Constitution placed the Office of Attorney General

within the judicial branch was legally flawed because the Office of Attorney General was a component of the executive branch; that the office was located within the article of the Constitution entitled "Judiciary" was of no consequence. Smith v. Hood, 238 So. 3d 1125, 2018 Miss. LEXIS 83 (Miss. 2018).

## § 174. District attorneys.

### JUDICIAL DECISIONS

**2. Powers and duties.**

Neither Mississippi's Constitution nor the common law authorizes the Attorney General to usurp or encroach upon the constitutional or the statutory power of the local district attorney in a criminal case where the Attorney General's assistance is not requested by the district attorney, and is in fact opposed by the district attorney. Williams v. State, 184 So. 3d 908, 2014 Miss. LEXIS 599 (Miss. 2014).

Neither the Mississippi Constitution nor any case law authorized judicial orders appointing the Attorney General as special prosecutor to prosecute a murder case against defendant, where the local district attorney, in his discretion, had made the decision not to prosecute. Williams v. State, 184 So. 3d 908, 2014 Miss. LEXIS 599 (Miss. 2014).

## § 175. Liability and punishment of public officers.

### JUDICIAL DECISIONS

**4. Removal of public officers–In general.**

Board of aldermen of a city lacked the authority to remove appellant as a trustee of a school district. The board's authority was based on a city ordinance inconsistent with the Mississippi Constitution. Jones v. City of Canton, 278 So. 3d 1129, 2019 Miss. LEXIS 347 (Miss. 2019).

## § 177A. Commission on Judicial Performance.

**Cross References —** Violations of prohibition against use of court personnel in judicial campaigns to be referred to Commission on Judicial Performance, see § 23-15-874.

### JUDICIAL DECISIONS

#### ANALYSIS

3. Construction and application.
4. Justice or judge.
8. Willful misconduct.
9. Conduct prejudicial to the administration of justice.
10. Sanctions–In general.
11. – – Reprimand, sanctions.
12. – – Removal from office, sanctions.
13. – – Suspension, sanctions.

**3. Construction and application.**

Judicial office exists independently of the individual who, for however long, may fill it, and in almost every circumstance, the office in question existed before the person came to hold it and continues to exist, held by another, after the individual leaves it; when, e.g., a chancery judge enters an order enjoining certain behavior by a party, the order remains in effect after the individual judge leaves office because it is a function not of the individual, but of the office. Thompson v. AG, 227 So. 3d 1037, 2017 Miss. LEXIS 177 (Miss. 2017).

Phrase "remove from office" necessarily means a permanent separation from office, such that an individual judge removed from office remains ineligible to return to it; as a necessary extension, there is no removal from office that is not permanent, and a removal from office that is not permanent is a suspension. Thompson v. AG, 227 So. 3d 1037, 2017 Miss. LEXIS 177 (Miss. 2017).

Circuit court properly denied a justice court judge relief from a county Democratic executive committee's decision to withhold his name from the general-election ballot for a new term based on his removal from the office of justice court judge because the Democratic Party was correct in nominating another candidate; under the constitution, removal from office means a permanent separation between the individual and the office in question. Thompson v. AG, 227 So. 3d 1037, 2017 Miss. LEXIS 177 (Miss. 2017).

**4. Justice or judge.**

Municipal court judge was publicly reprimanded because she committed judicial misconduct and conduct prejudicial to the administration of justice; the judge admittedly committed several acts of misconduct in violation of the Code of Judicial Conduct that brought the judicial office into disrepute, but she had no disciplinary history and fully cooperated with the investigation of the matter. Miss. Comm'n on Judicial Performance v. Clinkscales, 192 So. 3d 997, 2016 Miss. LEXIS 241 (Miss. 2016).

Mississippi Commission on Judicial Performance did not prove by clear and convincing evidence that the chancellor gave testimony he knew or should have known would be misleading because it did not provide any sworn testimony to contradict the chancellor's plausible version of events. Miss. Comm'n on Judicial Performance v. Shoemake, 191 So. 3d 1211, 2016 Miss. LEXIS 155 (Miss. 2016).

**8. Willful misconduct.**

County justice court judge, who also served as a pastor, had violated Miss. Code Jud. Conduct Canons 1, 2A, 2B, 3A, 3B(1), 3B(2), 3B(7), 3B(8), 3B(11), 3C(1), 3E(1), and 4A, and Miss Const. art. 6, § 177A, where he had contacted an investigator about a prostitution charge against the daughter of a friend and had sua sponte remanded the charge to the file, and had contacted another investigator and inquired about the arrest and pending charges of his parishioner's daughter. In addition to the public remand and $500 fine recommended by the Mississippi Commission on Judicial Performance, the judge was suspended without pay for 30 days. Miss. Comm'n on Judicial Performance v. Sutton, 275 So. 3d 1062, 2019 Miss. LEXIS 253 (Miss. 2019).

Chancellor violated the Code of Judicial Conduct because he signed ex parte orders concerning a ward, and the signature of the attorney for the ward's mother, without additional notarization, was insufficient support for an order touching upon the administration of the conservatorship; by accepting unsworn petitions and failing to conduct further inquiry, the chancellor exhibited negligence with regard to the administration of the ward's estate. Miss. Comm'n on Judicial Performance v. Shoemake, 191 So. 3d 1211, 2016 Miss. LEXIS 155 (Miss. 2016).

**9. Conduct prejudicial to the administration of justice.**

Stipulation of the Mississippi Commission on Judicial Performance (Commission) and a judge agreeing to the judge's judicial misconduct and issuing a public reprimand and fine was accepted because (1) the judge admittedly committed misconduct by not issuing final orders in 28 civil cases held in abeyance and issuing an order in a civil case without holding a promised hearing, constituting misconduct in office and conduct prejudicial to the administration of justice bringing the judicial office into disrepute, (2) the misconduct denied citizens prompt decisions they were entitled to and caused them unnecessary expense, (3) the judge was previously disciplined, and, (4) in mitigation, the judge cooperated with the Commission and ultimately entered orders in cases in which the judge retained jurisdiction. Miss. Comm'n on Judicial Performance v. McGee, 266 So. 3d 1003, 2019 Miss. LEXIS 137 (Miss. 2019).

Supreme court accepted and affirmed the recommendation of the Mississippi

Commission on Judicial Performance for a public reprimand of the judge because she was involved in her relatives' cases; she failed to adjudicate the domestic abuse cases properly by dismissing the matters without a hearing or order; she erred in ordering the refund of an expungement fee; she sought the removal of the complainant from her job; she violated the statute dealing with justice court fees; and her conduct was prejudicial to the administration of justice. Miss. Comm'n on Judicial Performance v. Curry, 249 So. 3d 369, 2018 Miss. LEXIS 315 (Miss. 2018).

**10. Sanctions–In general.**

Judge was publicly reprimanded, suspended for 30 days without pay, fined $1,100, and assessed costs of $200 because he threatened use of a weapon on a defendant, interrogated that the defendant concerning his use of drugs, which had no bearing on the charge before the court, and interrogated, demeaned, and intimidated the defendant's mother about the defendant's drug use and her parenting skills, had a history with the Commission on Judicial Performance, and engaged in willful misconduct prejudicial to the administration of justice which brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Vess, 227 So. 3d 952, 2017 Miss. LEXIS 150 (Miss. 2017).

**11. – – Reprimand, sanctions.**

Judge was publicly reprimanded, fined $3,000, and taxed with the costs of the proceedings because he gave a landlord legal advice, granted unrequested relief, entered an unsupported judgment, disregarded applicable rules of law, irreparably harmed the tenant, failed to acknowledge any wrongdoing, and attempted to lay blame on others for his conduct. Miss. Comm'n on Judicial Performance v. Judge, 227 So. 3d 938, 2017 Miss. LEXIS 149 (Miss. 2017).

**12. – – Removal from office, sanctions.**

Chancery court judge was removed from office and assessed costs where he acknowledged that he had pled guilty to attempting to corruptly influence a witness subpoenaed to appear before a federal grand jury proceeding and attempting to impede the provision of documents by the witness to the federal grand jury with the intent to influence the outcome of the proceeding, thereby violating Miss. Code Jud. Conduct Canon 1 and Miss. Const. art. 6, § 177A. Miss. Comm'n on Judicial Performance v. Walker, 172 So. 3d 1165, 2015 Miss. LEXIS 454 (Miss. 2015).

In a case where a judge stipulated to multiple incidents where she denied citizens their due process rights, the judge was removed from office based on violations of several judicial conduct canons, and the judge's resignation did not foreclose the need to apply appropriate sanctions. The judge admitted that she lacked the proper judicial temperament, her actions were serious, they constituted repeated misconduct, and they were willful; although mitigating circumstances existed because the judge acknowledged her errors, aggravating circumstances also existed. Miss. Comm'n on Judicial Performance v. Darby, 143 So. 3d 564, 2014 Miss. LEXIS 369 (Miss. 2014).

**13. – – Suspension, sanctions.**

Chancellor was publicly reprimanded, suspended for thirty days without pay, fined, and ordered to pay costs for violating the Code of Judicial Conduct because it was it inappropriate to extend his suspension beyond thirty days; in the past, the supreme court instituted thirty-day suspensions without pay for judges who had deprived citizens of their liberty and who had attempted to subvert and obstruct criminal proceedings, and the chancellor had not been investigated or disciplined before. Miss. Comm'n on Judicial Performance v. Shoemake, 191 So. 3d 1211, 2016 Miss. LEXIS 155 (Miss. 2016).

# ARTICLE 8.

# EDUCATION.

## § 201. Free public schools.

### JUDICIAL DECISIONS

**1. Construction and application.**

For fully funding Mississippi Adequate Education Program (MAEP) to be an enforceable constitutional right, such duty would have to arise from the language of the Constitution itself, which it does not, or be the only way for the Legislature to satisfy its constitutional obligation; but MAEP is not the only general law the Legislature could pass to fulfill its duty under Miss. Const. art. 8, § 201. Clarksdale Mun. Sch. Dist. v. State, 233 So. 3d 299, 2017 Miss. LEXIS 423 (Miss. 2017).

# ARTICLE 11.

# LEVEES.

## § 228. Levee districts.

**Editor's Note** — Laws of 2015, ch. 358, § 1, provides:

"SECTION 1. The Board of Mississippi Levee Commissioners of the Mississippi Levee District created under Section 228 of the Mississippi Constitution of 1890 may, in its discretion, by acts spread upon its minutes, enter into any agreements as it may deem appropriate for the management or administration of lands held by the United States Army Corps of Engineers in connection with drainage, flood control and levee projects within the Mississippi Levee District."

## § 229. Boards of levee commissioners.

**Editor's Note** — Laws of 2015, ch. 358, § 1, provides:

"SECTION 1. The Board of Mississippi Levee Commissioners of the Mississippi Levee District created under Section 228 of the Mississippi Constitution of 1890 may, in its discretion, by acts spread upon its minutes, enter into any agreements as it may deem appropriate for the management or administration of lands held by the United States Army Corps of Engineers in connection with drainage, flood control and levee projects within the Mississippi Levee District."

## § 232. Duties and powers of commissioners.

**Editor's Note** — Laws of 2015, ch. 358, § 1, provides:

"SECTION 1. The Board of Mississippi Levee Commissioners of the Mississippi Levee District created under Section 228 of the Mississippi Constitution of 1890 may, in its discretion, by acts spread upon its minutes, enter into any agreements as it may deem appropriate for the management or administration of lands held by the United States Army Corps of Engineers in connection with drainage, flood control and levee projects within the Mississippi Levee District."

# ARTICLE 12.

# FRANCHISE.

## § 247. Securing fairness in party primary elections and conventions.

### JUDICIAL DECISIONS

**1. In general.**

Prevailing in a primary election creates no right to demand a seat and no right to challenge another who has taken a seat and does not transform a candidate into a member of the House or Senate; prevailing in a primary merely makes one the official party candidate certified to run in the general election, and members of the Legislature are elected in general elections, hence the Constitution grants the Legislature the right to hear legislative election contests following a general election. Dillon v. Myers, 227 So. 3d 923, 2017 Miss. LEXIS 134 (Miss. 2017).

Because the election at issue specifically concerned a party primary election, the case was brought squarely within the purview of the more specific Miss. Const. art. 12, § 247, wherein the people directed the Legislature to enact laws to secure fairness in party primary elections; the adoption of Miss. Code Ann. §§ 23-15-955 and 23-15-927 is clear support for the distinction. Dillon v. Myers, 227 So. 3d 923, 2017 Miss. LEXIS 134 (Miss. 2017).

When Miss. Const. art. 4, § 38 and Miss. Const. art. 12, § 247 are read together, the Constitution vests the Legislature with exclusive jurisdiction to hear legislative election contests following general (or special) elections, but that jurisdiction does not extend to primary election contests; in exercising the mandate of § 247 to enact laws to secure fairness in party primaries, the Legislature granted the judiciary jurisdiction to hear all primary election contests. Dillon v. Myers, 227 So. 3d 923, 2017 Miss. LEXIS 134 (Miss. 2017).

Supreme court's prior opinions failed to address Miss. Const. art. 12, § 247, vis a vis Miss. Const. art. 4, § 38, and denied citizens the right to contest a primary election, codified by the Legislature as directed by the Constitution; the holdings in Foster v. Harden, 536 So. 2d 905 (Miss. 1988) and Henry v. Henderson, 697 So. 2d 447 (Miss. 1997) had a substantial adverse or significantly harmful effect upon the people, and to the extent they were contradictory, they are expressly overruled. Dillon v. Myers, 227 So. 3d 923, 2017 Miss. LEXIS 134 (Miss. 2017).

# ARTICLE 14.

# GENERAL PROVISIONS.

## § 258. Credit of State.

### JUDICIAL DECISIONS

**5. In general.**

Constitutional provision was inapplicable in a breach of contract action between a state agency and a vendor when the state agency directly paid the invoices which the vendor submitted to the media vendors that provided the invoices to the vendor because the trial court's holding resulted in a fair exchange of value for value. Mann Agency, LLC v. Miss. Dep't of Pub. Safety, — So. 3d —, 2020 Miss. LEXIS 342 (Miss. Sept. 24, 2020).

## § 261. Expenses of criminal prosecutions; fines, forfeitures and costs.

### JUDICIAL DECISIONS

**1. Construction and application.**

Youth court's assessment of costs against a juvenile's parents violated their rights to due process of law because the juvenile was never adjudicated delinquent; under the Mississippi, defendants, in cases of conviction, may be taxed with the costs, and so it is for unadjudicated juveniles. J.P. v. State, 151 So. 3d 204, 2014 Miss. LEXIS 561 (Miss. 2014).

## § 263A. Marriage defined as only between a man and a woman.

**Editor's Note —** On June 26, 2015, the Supreme Court of the United States, in the case of *Obergefell v. Hodges* (135 S. Ct. 2584, 192 L. Ed. 2d 609, 2015 U.S. LEXIS 4250), held that under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, same-sex couples have a fundamental right to marry, and that since same-sex couples can exercise the fundamental right to marry in all states, there is no lawful basis for a state to refuse to recognize a lawful same-sex marriage performed in another state on the ground of its same-sex character.

### JUDICIAL DECISIONS

ANALYSIS

1. Constitutionality.
2. Standing.

**1. Constitutionality.**

District court correctly granted an injunction barring enforcement of Miss. Const. art. XIV, § 263A and Miss. Code Ann. § 93-1-1(2), because the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. Campaign Southern Equal. v. Bryant, 791 F.3d 625, 2015 U.S. App. LEXIS 11581 (5th Cir. Miss. 2015).

Mississippi's same-sex marriage ban violated the Fourteenth Amendment Due Process and Equal Protection Clauses as it deprived same-sex couples and their children of equal dignity under the law, and gay and lesbian citizens could not be subjected to second-class citizenship. Campaign for Southern Equal. v. Bryant, 64 F. Supp. 3d 906, 2014 U.S. Dist. LEXIS 165913 (S.D. Miss. 2014), aff'd, 791 F.3d 625, 2015 U.S. App. LEXIS 11581 (5th Cir. Miss. 2015), in part, 197 F. Supp. 3d 905, 2016 U.S. Dist. LEXIS 83036 (S.D. Miss. 2016).

**2. Standing.**

Same-sex couples had standing to challenge Mississippi's same-sex marriage ban as they were all residents of Mississippi, where they were subject to laws which denied the first couple the right to marry and denied recognition of the second couple's out-of-state marriage, and Mississippi law caused them other substantial harms affecting their and their children's lives; a gay and lesbian advocacy group had standing to sue on behalf of its members, which allegedly suffered the same injuries as the couples, plus additional injuries. Campaign for Southern Equal. v. Bryant, 64 F. Supp. 3d 906, 2014 U.S. Dist. LEXIS 165913 (S.D. Miss. 2014), aff'd, 791 F.3d 625, 2015 U.S. App. LEXIS 11581 (5th Cir. Miss. 2015), in part, 197 F. Supp. 3d 905, 2016 U.S. Dist. LEXIS 83036 (S.D. Miss. 2016).

# ARTICLE 15.
# AMENDMENTS TO THE CONSTITUTION.
# IN GENERAL

## § 273. Amendment process.

**Cross References** — Procedure for amendments to the constitution by voter initiative, see § 23-17-1 et seq.